

**MINUTES OF THE
BOARD OF ADJUSTMENT MEETING
EILEEN DONDERO FOLEY COUNCIL CHAMBERS
MUNICIPAL COMPLEX, 1 JUNKINS AVENUE
PORTSMOUTH, NEW HAMPSHIRE**

7:00 P.M.

April 21, 2026

6:30 P.M. -Non-Public Session (Conf. Rm A)

7:00 P.M. -Regular Meeting Begins

MEMBERS PRESENT: Beth Margeson, Chair; Jeffrey Mattson, Vice Chair; David Rheaume; Paul Mannle; Thomas Nies; Thomas Rossi; Robert Sullivan; Mike Lucas, Alternate

MEMBERS EXCUSED: None.

ALSO PRESENT: Stefanie Casella, Planning Department

Chair Margeson called the regular meeting to order at 7:03 p.m.

*Mr. Mannle moved to **leave the non-public meeting** and seal the minutes. Mr. Rossi seconded. The motion passed unanimously, 7-0.*

*Mr. Sullivan moved to **suspend** the rules to take New Business Item 3B, Road to the West, LLC (Owner) out of order. Mr. Nies seconded. The motion passed unanimously, 7-0.*

Chair Margeson read the postponement request into the record.

*Mr. Mannle moved to **postpone** the request to the May meeting, seconded by Mr. Sullivan. The motion passed unanimously, 7-0.*

I. APPROVAL OF MINUTES

A. Approval of the **March 17, 2026** meeting minutes.

Chair Margeson abstained from the vote.

*Mr. Rheaume moved to **approve** the March 17 minutes as presented, seconded by Mr. Nies. The motion passed unanimously, 6-0, with Chair Margeson abstaining.*

B. Approval of the **March 24, 2026** meeting minutes.

Mr. Nies and Chair Margeson abstained from the vote.

*Mr. Rheume moved to **approve** the March 24 minutes, seconded by Vice-Chair Mattson. The motion passed unanimously, 5-0, with Mr. Nies abstaining and Chair Margeson abstaining.*

C. Approval of the March 31, 2026 Work Session minutes.

*Mr. Sullivan moved to **approve** the March 31 minutes, seconded by Mr. Nies.*

Ms. Casella said Assistant Planning Manager Peter Stith and Deputy City Attorney Trevor McCourt did not review the minutes, and she asked if the Board wanted to postpone their approval until after Mr. Stith and Attorney McCourt reviewed them. The Board agreed.

Mr. Sullivan and Mr. Nies **withdrew** their motions.

*Mr. Rheume moved to **postpone** acceptance of the March 31 minutes until the May meeting. Mr. Nies seconded. The motion passed unanimously, 7-0.*

II. OLD BUSINESS

A. 238 Austin Street – Rehearing Request [Timestamp 12:19]

Mr. Rossi recused himself. Mr. Lucas also recused himself from taking a voting seat. Chair Margeson said the Board received four documents pertaining to the rehearing request, two from the appellants and two from the appellees.

DECISION OF THE BOARD

Mr. Sullivan said the Board's test was whether they had a good reason to find that the petition should be reheard. He said the most salient point made in the motion was that there was some confusion about the role of the Demotion Review Committee in the City's regulatory process. He said the non-existence or function of the Demolition Review Committee played no part in his analysis of the application, so whether or not the Demolition Review Committee was properly or improperly discussed was irrelevant to his decision that evening. He suggested denying the motion for a rehearing. Mr. Rheume said a lot of information was presented to the Board and that they postponed consideration of it at the March meeting because they only had four voting members and wanted more time to digest it. He said he reviewed the Board's deliberations. He said the rehearing of a decision by the Board is a high bar and that there must be clear evidence that the Board somehow made a mistake that needs to be readdressed, or that some significant new piece of information that should have been available was not available or affected the Board's deliberations. He agreed that there was some discussion about the Demolition Review Committee and its role. He said he was the member who made the successful motion to grant the applicant's relief, but now the appellants were saying there was an error. He said he had talked a bit about the motion, the Demolition Ordinance, and the demolition process, and that he did not say that the Board's decision was reliant on that process being able to make an impactful difference. He said he made it clear that his impression of the Demolition Ordinance and the Demolition Review Committee was that they are a useful outlet for providing information but unlikely to affect significant change in terms of preventing the demolition. He said he also talked about some of the other historical aspects brought

up by abutters and whether he had empathy for their arguments. He said he made it clear that the demolition portion of it was not something that the Board had the ability to include in their consideration. He said one of the appellant's arguments was there are historic properties outside the Historic District that are in the BOA's purview. He said he talked to that and his motion addressed it and that the motion was carried by the majority of the Board. He said the Board addressed all the fundamental points that the appellant was bringing up. He said there was discussion about a new technical report, but a lot of that dealt with the demolition of the barn portion of the property. He said overall, the argument that he made and agreed upon was that the demolition was not one of the things before the Board. He there was not enough there to say that the Board erred. He said it was the Board's interpretation and it was done in good faith and the Board's decision should stand.

*Vice-Chair Mattson moved to **deny** the rehearing request.*

Vice-Chair Mattson said his reasoning was that there was an understandable variety of opinions and thought on the matter, but specifically related to the five criteria, he did not think there was an error in the process in which the Board arrived at its decision and motion that ultimately prevailed.

Mr. Rheaume seconded. He said the Board finds no error or omission that warrants a rehearing to be granted for the appellant's application.

The motion passed by a vote of 5-1, with Mr. Mannle voting in opposition and Mr. Rossi recused.

B. The request of **William and Virginia Osborn (Owners)**, for property located at **133 Miller Avenue** whereas relief is needed to demolish the existing one-story garage and construct a new two-story attached garage which requires the following: 1) Variance from Section 10.521 to allow a) a 6-foot rear yard where 20 feet is required; and b) 3-foot left side yard where 10 feet is required. Said property is located on Assessor Map 129 Lot 26 and lies within the General Residence A (GRA) District. (LU-26-21)

SPEAKING TO THE PETITION [Timestamp 21:16]

Attorney Tim Phoenix was present on behalf of the applicant, along with the owners William and Virginia Osborn, Corey Coldwell of TF Moran, and Christian Pearson of Pearson Builders. Attorney Phoenix reviewed the location of the proposed two-car garage with storage in the back and living space above it. He said the new garage would be connected to the main house with a breezeway/mudroom and that the deck and walkway would be removed. He said the lot was almost double the size required in the area. He said the neighbor's garage slightly encroached on the property line but that Mr. Pearson met with the neighbor and resolved the neighbor's concerns. He described the property's surrounding context and said the relief was needed due to the home's design and was why the garage and driveway were proposed to be behind the house. He said the additional living space would include a needed bedroom. He reviewed the criteria.

[Timestamp 36:01] Mr. Sullivan said Attorney Phoenix mentioned that one of the motivations for the requested relief was a large family in a smallish building, but he said the applicant was a construction company. He asked how the two fit together. Attorney Phoenix said the applicant was

the builder, who was applying for the owners. Mr. Rheume said the memorandum stated that the project was consistent with the other garage expansions in the neighborhood, which have provided larger garages matching the architectural style of the main home while providing living space above. He said that was a specific comparison point and that he did not see any examples in the packet. Attorney Phoenix said it could have been more thoughtfully detailed, but they had the examples of 9 Willard Street and 147 Summer Street in mind. Mr. Rheume said he thought there would be examples within a reasonable walking distance from the applicant's home. He said a lot of red was shown in the corner of the proposed construction conditions plan, and he asked if it reflected the demolition of all the items to make way for what the applicant proposed to build. Attorney Phoenix agreed. He said the red section was supposed to show a small connector that connected the existing garage to the rear area, with the deck and walkway coming out. Mr. Rheume said he wanted to ensure that it was showing everything that would be demolished. He said the back of the new 2-1/2 story would be three feet away from the property line towards the church, and from a maintenance standpoint three feet was not much. He asked if the applicant discussed having a maintenance easement with the neighbor. Attorney Phoenix said he was not aware of it. Mr. Rheume said the proposed structure was a lot taller than the existing one and more intensive to maintain. He said the closest point of the church structure had a large stained glass window that allowed light into the property. He asked whether the applicant had considered that as a concern. Attorney Phoenix said he did not think the project would take an unreasonable amount of light and air from the stained glass window and the church, and if it were a concern, the applicant would have heard from the church. Mr. Rheume said the first-floor layout showed a large storage area behind the garage. He said the garage was 24 deep and the applicant wanted an additional 11 feet of storage area. He asked why that would weigh in the applicant's favor in the balancing test. He noted that the 10-ft hangout space occupied a good portion of the rest of the space. Mr. Pearson said the family had a lot of recreational equipment, like bikes and kayaks, and there was no other outbuilding to place them in, which was the reason they were asking for the extra 10 feet.

[Timestamp 45:59] Mr. Rossi said the orientation of the structure on the property was such that a taller structure close to the lot line had the potential to obscure sunlight coming in from the southern direction. He said he was sensitive to that with regard to the stained glass window in the church. He said the purpose of stained glass ornamentation in churches is part of a religious expression of an artistic depiction of stories that may be particularly relevant to the congregation. He asked why the next structure had to remain so close to the lot line and what would prevent the owner from moving it seven feet forward toward Rockland Street. Attorney Phoenix said it was determined that it was the optimal location for the garage to meet the family's needs and have everything match up for the breezeway to connect to the main house. He said they did not think it detracted from air and light or the purpose of a stained glass window and that the church did not object to the project. He noted that there were some tall arborvitae as well. Mr. Rossi said he was looking for a property hardship argument that justified keeping a taller structure that would partially obscure light shining from the southerly direction into the stained glass structure. He said it did not always turn out to be true that if no one objected, there were no concerns, and he did not want to make that assumption in a case that doing so would override his own judgement. He said he wasn't wild about the lack of evidence argument. Related to the other garage that protruded into the property, he asked if there was any dispute about the property line. Attorney Phoenix said he was not aware of any and that there was no dispute on their side. Mr. Rossi said the Board should know if there was an ongoing dispute so

that they could ensure that the variance was adequate to cover the potential if there was some discussion about moving the property line. Attorney Phoenix said there was no discussion about moving the building or property line and that an easement could be granted to the neighbor to leave the garage where it is. He said his main concern was whether that little bit would put them over the line in terms of coverage or open space, and that City Staff confirmed that it would not.

Vice-Chair Mattson asked if the Rockland Street abutter's questions were addressed. Mr. Pearson said he spoke to the abutter and that he was mostly concerned about the tall arborvitae because they encroached on his driveway. He said if the variance was granted, the arborvitae would be removed because they were so overgrown. He said the neighbor was excited about that. Attorney Phoenix noted that the roof was a hip roof, so thought was given to slanting the roof, given the height of the building. He said the decision was in part to match but that it provided more area for light and air instead of tearing out the gable at the end. Mr. Nies said the applicant's memorandum stated that the proposed garage would be well screened from the closest residence. He asked if the applicant was referring to the fact that it would be near the closest residence's garage or to the tree line. He said the trees would probably be removed, so he was confused about the screening being discussed and what would be there after modification. Attorney Phoenix said he had not known that the trees would come down, otherwise he wouldn't have mentioned it. He said the main house screened a lot of the view of the garage because it was large and between the garage and Rockland Street. He said the neighbor's garage, although smaller, provided some screening.

Chair Margeson opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chair Margeson closed the public hearing.

DISCUSSION OF THE BOARD [Timestamp 58:04]

Mr. Nies said it was true that the current garage was just as close, but the new garage would be much larger. He said he was curious as to why the applicant did not try to move the garage forward and noted that the Board did not get an explanation when they asked that question other than it was due to the design of the house. He said the back wall of the garage was quite a distance away from the wall of the house and it was difficult for him to see what the hardship was and why the applicant could not have moved the new garage farther away from the church's lot line. He said there were a few questions asked about the hardship that would necessitate putting the garage on the side yard, and he thought there was a strong argument as to why the garage needed to be located near the rear setback. He said he was still struggling with having that side yard setback so small on the church side. Mr. Rossi agreed and said he struggled with finding the hardship of the land that dictates that the new garage has to go in that spot. He said the rear yard setback was quite reasonable, given the layout of the land and the location of the house, so he was okay with that variance but not the other one. Mr. Rheume said it was a significant vertical expansion along a very close property line and that he was concerned about maintaining that. He said it was going closer to the closest point on the neighboring property's building because it jutted out at the spot where the applicant was proposing to jut their new garage. He said the impact of light and air was exacerbated in that location and not

somehow mollified by the fact that the next door neighbor is a church. He said he was more comfortable with the rear yard setback because it was six feet where 20 is required. He said he thought the 20-ft requirement was somewhat excessive and thought it should be something closer to 10 feet due to the sense that the setback seemed like a side yard for the property.

DECISION OF THE BOARD [Timestamp 1:04:27]

*Mr. Rossi moved to **sever Variances 1a and 1b** so that they could be considered separately. Mr. Sullivan seconded the motion. The motion passed by a vote of 6-1, with Chair Margeson voting in opposition.*

*Mr. Rossi moved to **deny Variance 1b**, seconded by Mr. Mannle.*

Mr. Rossi referred to Section 10.233.22 and said he did not feel that granting the variance would observe the spirit of the ordinance. He said the purpose of setbacks was to preserve open space and air and light, and in this case, it would be a taller than existing structure within that setback and would block the southern exposure to a significant feature of the neighboring property, which required good lighting in order for it to continue to operate the way it did. He said it would go to substantial justice, which he would not address. He referred to Section 10.233.25, the unnecessary hardship, and said he did not see any specific conditions of the property. He said it is a large property and there is room to consider other locations for that structure. He said the location was reasonable from an architectural standpoint, but that he found no hardship of the property dictating that it must be placed that close to the side lot line, and he felt that it could not achieve the same fair results for the owner for a more compliant conforming setback to the side lot line, so it failed on the hardship criteria. Mr. Sullivan said he would vote against the motion because he did find a special condition on the property, which was that it already has the existing building that distinguishes it from other similarly-regulated properties. Vice-Chair Mattson agreed and said, even though he shared the concern about the taller structure, the sun would still come in at an angle even in the winter above the height of the roof of the proposed addition.

The motion to deny passed by a vote of 5-2, with Mr. Sullivan and Vice-Chair Mattson voting in opposition.

*Mr. Rossi moved to **grant Variance 1a**, seconded by Mr. Nies.*

Mr. Rossi said one could argue that some of the same issues discussed with the previous motion were also at play, which was the consideration of light and space, but the overarching factor that convinced him in this case was the hardship. Referring to Section 10.233.25, he said he could not conceive of an architectural plan that would reasonably allow full conformance with that 20-ft setback on a rear yard and the garage. He said the location of the garage on the property, with the exception of the previous discussion on Variance 1b, was reasonable and appropriate given that it was where the driveway was and it made the most sense to put it there. He said the hardship criteria was satisfied. He said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said there was no public interest to be gained in not granting the variance for the rear yard setback. He said the structure was beautifully designed and fit

architecturally with the rest of the neighborhood, and when completed, it would look wonderful and would not cause any safety issues. He said there was no contradiction with the requirements of Section 10.233.22. Referring to Section 10233.23, he said substantial justice would be done because he could not see any gain to the public by denying the variance. He said the balance of interest was in the favor of the property owner. Referring to Section 10.233.24, he said granting the variance would not diminish the values of surrounding properties. He said the Board submitted into their record the public comment from Peter and Deborah Hayden of 205 Rockland Street that expressed various concerns related to the impact on their property, and the Board had evidence that those concerns were addressed. Mr. Nies concurred. Referring to the hardship criteria, he said it was clear that the lot was an unusually large one and that the location of the curb cut and the driveway limits the location of the garage. He said those were special conditions as well as the location of the house and the driveway. He said it would be reasonable to have a smaller setback due to the reasons Mr. Rossi pointed out about the rear and side yards and so on. Mr. Rossi agreed with Mr. Nies' comments and said he would like to include them in the findings of fact.

The motion passed by a vote of 6-1, with Chair Margeson voting in opposition.

- C. The request of **John C. and Janice D. Carpenter (Owners)**, for property located at **614 Broad Street** whereas relief is needed to construct a front porch and rear addition to the primary dwelling, to demolish the existing detached garage, and construct a new two-story garage with Accessory Dwelling Unit above which requires the following: 1) Variance from Section 10.521 to allow a) a 0.5 foot rear yard where 20 feet is required; b) 2.5 foot left side yard where 10 feet is required; and c) 34% building coverage where 25% is the maximum. Said property is located on Assessor Map 221 Lot 54 and lies within the General Residence A (GRA) District. (LU-26-24)

SPEAKING TO THE PETITION [Timestamp 1:18:36]

Attorney Derek Durbin was present on behalf of the applicant. The owners John and Janice Carpenter and the architect Emily Wetherbee were present via Zoom. Attorney Durbin said the property was a narrow and small lot, one of the smallest in the area, and the single-family 1-1/3 story home was the smallest home in the area as well. He said the 363 sf detached garage was nonconforming and that the applicant wanted to add a 1-1/2 story, 462 sf addition to the back to house a bedroom and bathroom and also add a front porch. He said they wanted to demolish and reconstruct the garage in the same footprint and add an area above it. He said they would remove an existing 263 sf deck and replace it with a small one and a staircase to access the rear addition. He reviewed the criteria. He noted that only two other homes might be impacted, the assisted care facility at 188 Jones Avenue and the opposite home. He said both structures were buffered by trees.

[Timestamp 1:27:53] Mr. Rheume asked Attorney Durbin what he meant when he said the applicant was asking for a vertical expansion of the garage structure and would have needed the variances regardless. Attorney Durbin said he wanted to revise that statement. He said he consulted with City Staff and there was an indication that an ADU could be above a garage without requiring relief, so he believed that a vertical expansion could indicate relief, particularly where it said there was no increase or new nonconformity to be made. He said there was an argument to be made

because that language was different than Section 10.330 in the ordinance. He said maybe it was intended that someone could not have a horizontal expansion in the setbacks, so he believed the relief was probably needed. He said he was not sure that the person who gave him the information realized the extent of the reconstruction that would be involved. Mr. Rheume said Exhibit A was submitted to give the Board an idea that the 0.131 acre lot was the smallest in the area. He said some of the other lots were not far different and that Attorney Durbin mentioned that there were other neighboring properties that had greater than allowed building coverage. Mr. Rheume said he would have liked to see those noted in the exhibit, and he asked if Attorney Durbin had information on the ones that were close in size and if they were currently over 25 percent. Attorney Durbin said a density analysis was done by the other lawyer in his office, so he could not say which properties on the list had greater-than-allowed building coverage. Mr. Rossi asked how much of the 35 percent lot coverage was the proposed front porch. Attorney Durbin said it was 4 percent. Mr. Rossi said that if one were to say the proposed front porch did not exist, the ask would really be closer to 31 percent than 35 percent. He said, considering the purpose of the lot coverage requirements in the ordinance, the front porch did not really present a big massing issue because it was open on all sides and not obscure any views. He asked if the applicant would be comfortable with a stipulation stating that if the lot coverage is granted, there would not be a future enclosure of the porch to make it a solid structure. Attorney Durbin agreed. Mr. Rossi said the other aspects of the expanded lot coverage fell within the setbacks, which weighed in favor of thinking that the small size of the property was a hardship factor that could be considered.

Chair Margeson opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke. Chair Margeson noted that the Board received a letter in support of the project from the neighbors at 600 Broad Street. She closed the public hearing.

DECISION OF THE BOARD [Timestamp 1:36:20]

Mr. Rossi moved to grant the variances for the petition as presented and advertised, seconded by Mr. Sullivan.

Mr. Rossi referred to Sections 10.233.21 and .22 and said granting the variance would not be contrary to the public interest and would not violate the spirit of the ordinance. He said some of the factors to consider led him to believe that it does not violate the spirit of the ordinance, particularly with regard to the garage and the setbacks associated with it. He said there was a large distance between that structure and any of the structures on the surrounding lots, so there was no real infringement on the free circulation of air and light on surrounding properties. Therefore, he believed that the variance request was compliant with the spirit of the ordinance in all major respects. He said the additional structure was within the allowed setback, which was the best that could be done in compliance with the spirit of the ordinance. He said granting the variance would do substantial justice. He said he often walked on that street and could not imagine what public impact the variance would have that would be negative and most of the properties on the street had front porches, which would make the home fit in better with the neighborhood. He said there would

be no loss to the public that would outweigh any gain to the applicant. He said granting the variance would not diminish the values of surrounding properties. He said the location of the garage was so well separated from the other structures that it would not have an impact on those properties, and the rest of the additional lot coverage happened within the setback requirements and would not impact the neighbors in any significant way. Referring to Section 10.233.25, he said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. He said the hardship of the property was that the total square footage available to work within the lot was substantially lower than the square footage envisioned in the zoning for that area, which was 7500 square feet. He said the lot was only 5,735 sf, and because of that, it was difficult to see how any additions and expansions to include ADUs or reasonable additional space would not create a problem with regard to lot coverage. Therefore, he thought it was a hardship for the property that was worthy of consideration, particularly since a big portion of the variance, 4 percent out of the 10 percent, was related to the front porch that did not significantly block light or air circulation. He said it was very consistent with the rest of the neighborhood. He suggested a stipulation that the front porch would not be enclosed and would not become part of an enclosed structure at any future date because part of the basis for his motion was that the nature of the design of the front porch did not present a blockage of views, light, and air.

Chair Margeson suggested that the **condition** (or stipulation) should read as follows: The front porch shall not be enclosed and become part of an enclosed structure at a future date.

Mr. Sullivan concurred. He said the Board received an email of support from direct abutters Chris Dwyer and Mike Huxtable, who were public-spirited citizens with deep connections to the City government, and that he would rely on them for about three of the Board's criteria. Mr. Rheume said he would not support the motion. He said he was okay with the setback relief, despite not hearing a lot of discussion about the rationale, although it was a half-foot from the property line, which seemed extreme but it was just one corner of the garage layout. He said it increased substantially with the angles of the garage and the property line and ladders could be used to do what was necessary. He said the applicant's argument that the abutter to the rear of the property was a considerable distance away, and it was unlikely that there would be a structure that would come close to that. He said the 620 Broad Street property was far away from the garage structure, so he was good with that. He said his concern was that it was currently conforming and he would have liked to see a stronger argument as to why it was within the general characteristics of the neighborhood. He said the applicant said there were other properties that were not much larger but he did not say what those properties were and what they looked like in terms of lot coverage. He thought that was an important aspect if he were to approve the expansion and say that it met the general characteristics of the neighborhood, so he would not support the motion. Chair Margeson said she also would not support the motion because she was concerned about the increase in lot coverage and its related hardship.

The **amended** motion was:

*Mr. Rossi moved to grant the variances for the petition as presented and advertised with the following **condition**:*

1. *The front porch shall not be enclosed and become part of an enclosed structure at a future date.*

Mr. Sullivan seconded the motion. The motion passed by a vote of 5-2, with Mr. Rheaume and Chair Margeson voting in opposition.

III. NEW BUSINESS

- A. The request of **Anita Koury and Theodore Constantino (Owners)**, for property located at **302 Miller Avenue** whereas relief is needed to construct an addition to the existing garage, which requires the following: 1) Variance from Section 10.520 to allow a) 30% building coverage where 25% is maximum allowed; and 2) Variance from Section 10.573.20 to allow a 4 foot rear yard where 10 feet are required. Said property is located on Assessor Map 130 Lot 11 and lies within the General Residence A (GRA) District. (LU-26-32)

SPEAKING TO THE PETITION [Timestamp 1:46:55]

The applicants/owners Anita Koury and Theodore Constantino were present. Mr. Constantino said they wanted to add a shed to the side of the garage, which was noncompliant and too close to the rear and side lot lines. He said the left and rear setbacks were similar to two neighboring properties and that none of the buildings in the neighborhood aligned with the lot lines. He said the proposed location of putting the shed so that it attached to the existing garage was the best one because the property was so small. He said the shed would be half the size of the garage and have a total covered area of 140 square feet, with an enclosed dimension of 116 sf and an open area of 24 sf at the rear and covered by the roof to accommodate the trash bins. He reviewed the criteria.

[Timestamp 1:53:03] Mr. Rossi read the statement in the application that said the setback measurements are approximate because none of the structures on the property or on the adjacent properties are square with the lot lines. He said in those cases, the Board looked at the point of the structure closest to the lot line to determine the required setback. He wanted to ensure that if the applicant got the relief, it would be adequate for the structure that he had in mind. Mr. Constantino explained why he was satisfied with four feet being the amount of relief he needed. Mr. Rheaume verified that the total height, combined with the heights of the shed and the roof, was ten feet or less. He said if the shed were shortened by two feet and did not have the open storage roof area, the applicant could have built what he wanted by right without needing any relief from the Board. Ms. Casella said the existing garage was 225 square feet and that the applicant was adding onto that.

Chair Margeson opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION [Timestamp 1:57:40]

Sam Winebaum of 312 Miller Avenue said his garage was on the left corner and had been in the family for 100 years. He said he had no objection of the applicant's plan as presented. No one else spoke, and Chair Margeson closed the public hearing.

DECISION OF THE BOARD [Timestamp 1:58:36]

Mr. Nies asked how the building inspector would look at the four feet and whether the applicant would have to return if it was an inch off, or whether it could be rounded down. Ms. Casella said if it was less than what the relief is granted for, it comes back to the Board. She said she did not have the authority to judge 3'11.5", but sometimes the applicants made their structure smaller. She said if the applicants were six inches off, they could make it six inches less to make it four feet, and that would be usually acceptable. Mr. Rheume said it had been advertised as four feet and thought the Board would be remiss to grant more than what was advertised. He agreed with Ms. Casella and said the applicant could either resubmit his petition or make the shed three inches shorter.

*Mr. Nies moved to **grant** the variances for the petition as presented and advertised, seconded by Mr. Mannle.*

Mr. Nies said the variance relief request was a minor one. He said the existing garage was four feet from the property line, and the shed would extend the size of the garage but would not add any more need for setback relief. He said the applicant was still asking for four feet. He said the building coverage change was marginal but was going from 29-1/2 percent to 30 percent, which was unnoticeable to the public. He said granting the variances would not be contrary to the public interest. He said it was a small addition to an existing garage and he could not see how it would affect the health, safety, and welfare of the neighborhood. Due to its location, he said the shed would not have any additional effect on light and air that the current garage did not already have, noting that it would be shorter than the existing garage and in the same location. He said granting the variances would not alter the essential characteristics of the neighborhood because many of the lots in that area had garages and many of them were within setbacks that were very close. He said the existing garage was hardly noticeable to anyone driving down the street and that he did not think the additional shed would be seen by someone driving down the street because it might be partially blocked by the house. He said those reasons showed why granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance, and would be consistent with the ordinance in the respect that the ordinance tries to protect light, air, and the public's health, safety, and welfare. He said granting the variances would do substantial justice, noting that he could not see any benefit to the public by not granting them and that the applicant would suffer a loss if the variances were disapproved and would not have storage for yard implements and so on. He said granting the variances would not diminish the values of surrounding properties. He said no evidence was submitted that it would and there were no complaints or concerns expressed by the neighbors. He said the special conditions relating to hardship included that the lot is undersized, which was not unusual in that part of town. He said there were several undersized lots, but coupled with the small size of the lot was the existing garage that was already located in the rear setback of the area. He said the existing garage was not big enough to store anything in. He said those special conditions were such that there is no fair and substantial relationship between the purposes of the ordinance and its specific application to the property. He said the shed was a reasonable accessory use to a home and that he did not see any reason why the Board would insist on the strict application of the ordinance in this instance. Mr. Mannle concurred. He said if the homeowner had placed a 140 sf shed in compliance in the backyard, he would still

need the same variances for the lot coverage and the garage, and if had a change in use, he would still need the variances for the garage. He said it was a small ask.

[Timestamp 2:05:07] There was further discussion. Mr. Rossi said that Mr. Nies expressed some reservation about the adequacy of the 4-ft allowance in the variance, and he thought the Board could give the homeowner some flexibility by stipulating something. He said the additional storage shed was not even with the front of the garage due to a notch, so he suggested stipulating that it could deviate from what was presented and advertised if the shed needed to be forwarded to be even with the front of the garage and give the necessary clearance. It was further discussed. Mr. Rheaume said the Board was giving the applicant the relief he wanted, and if the applicant discovered there was a problem, he could modify his plan slightly or return for additional relief. He said if the applicant moved the shed a bit farther away, it would still be within the fundamental approval from a BOA standpoint. Chair Margeson said she preferred a clean motion without any stipulations. Mr. Nies agreed, noting that it would be a minor change if the applicant had to move the shed an inch over.

The motion passed unanimously, 7-0.

B. REQUEST TO POSTPONE The request of **Road to the West, LLC (Owner)**, for property located at **140 West Road** whereas relief is needed to create an outdoor dining area, which requires the following: 1) Variance from Section 10.440 Use #19.50 to allow an outdoor dining or drinking area, as accessory use where it is not allowed. Said property is located on Assessor Map 252 Lot 2-13 and lies within the Industrial (I) District. **REQUEST TO POSTPONE (LU-26-34)**

DECISION OF THE BOARD

*Mr. Mannle moved to **postpone** the request to the May meeting, seconded by Mr. Sullivan. The motion passed unanimously, 7-0.*

IV. ADJOURNMENT

The meeting adjourned at 9:11 p.m.

Submitted,

Joann Breault
BOA Meeting Minutes Taker