

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

**7:00 P.M.**

**February 26, 2019  
Continued From  
February 20, 2019**

**MEMBERS PRESENT:** Chairman David Rheume, Vice-Chairman Jeremiah Johnson, Jim Lee, Peter McDonell, Christopher Mulligan, Alternate Chase Hagaman

**MEMBERS EXCUSED:** John Formella, Arthur Parrott, Alternate Phyllis Eldridge

**ALSO PRESENT:** Peter Stith, Planning Department

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Chairman Rheume stated that the evening's petitions were postponed from the previous meeting and that Case 2-7 was withdrawn by the applicant.

**IV. PUBLIC HEARINGS – NEW BUSINESS**

**(The following petitions were postponed at the February 20, 2019 meeting. Cases 2-2 and 2-5 were heard at that meeting. Case 2-1 was tabled to the March meeting.)**

3) Case 2-3

Petitioner: Stephen G. Bucklin

Property: 322 Islington Street

Assessor Plan: Map 145, Lot 3

Zoning District: Character District 4-Limited-2 District.

Description: Move existing carriage house to a new foundation and add one-story connector to the existing house.

Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including variances from the following:

- a) from Section 10.5A41.10A to allow a 1'± rear yard where 5' is required;
- b) from Section 10.5A41.10A to allow a 2'± left side yard where 5' is the minimum required; and

- c) from Section 10.321 to allow a nonconforming structure or building to be expanded, reconstructed or enlarged without conforming to the requirements of the ordinance.

### **SPEAKING IN FAVOR OF THE PETITION**

Project Designer Brendan McNamara was present on behalf of the applicant to speak to the petition. He noted that the most affected neighbor requested a stipulation to protect her property. He reviewed the petition and explained how drainage issues for the properties owned by the applicant and his neighbor would be resolved. He submitted to the Board documentation addressing the stipulation for the foundation and drainage issues and said the neighbor would have to approve the structural engineering plan before the project could be completed. He reviewed the criteria and said they would be met.

In response to Mr. Mulligan's questions, Mr. McNamara said the carriage house had no current use because the roof leaked. He said that approximately 1,500 square feet of living space would be added by the repurposing of the carriage house and that the addition would include the existing carriage house footprint.

Chairman Rheume verified that the current two-family dwelling was located in the main house, with the first floor being a one-family residence and the second floor being the second family residence, and that the intent was to keep that relationship, but the first floor would expand into the new carriage house area. Mr. McNamara explained what the new configuration would look like. He added that the current width of the single story connector would be slightly reduced.

Chairman Rheume asked how far the neighbor's house was from the property line. Mr. McNamara said it was four feet, with three feet on the neighbor's side. In response to further questions, Mr. McNamara said there would be a loss of space if they couldn't dig into the foundation and that there were ways to excavate if there was no basement, e.g. using a slab. He said the applicant did not consider moving the carriage house closer to the main house, giving up some of the additional space, because that space would be unusable. Chairman Rheume noted that there was a chance to start fresh, as far as the placement of the carriage house.

### **SPEAKING IN OPPOSITION TO THE PETITION AND/OR SPEAKING TO, FOR, OR AGAINST THE PETITION**

No one rose to speak, and Chairman Rheume closed the public hearing.

### **DISCUSSION OF THE BOARD**

Chairman Rheume stated that the stipulation could be referenced in the motion. Mr. Hagaman asked if the stipulation met all the neighbor's concerns. Chairman Rheume agreed and said it was brave of the applicant to give the neighbor veto power over his proposal. Mr. Mulligan said he didn't have a lot of concern about the project because the applicant offered to have a

structural engineer oversee the construction and design and to allow the neighbor to voice any objections. He said it covered all the bases and that he didn't know what else could be done unless the project was redesigned from scratch.

## **DECISION OF THE BOARD**

*Mr. Mulligan moved to **grant** the variances for the application as presented and advertised, with the following stipulation:*

- A signed letter of approval from the property's rear neighbor is to be submitted containing Structural Details and Methods certified by a licensed Structural Engineer. The letter should describe how the proposed new foundation of the Carriage House at 322 Islington Street will be constructed in a manner so as not to cause any damage or detriment to the existing stone foundation at 217 Cabot Street.
- Included as a part of this document should be a Site Plan of the area between the (2) structures showing grading, drainage and the nature of materials to be used.

*Mr. McDonell seconded.*

Mr. Mulligan said the application was a good one and that he applauded the applicant for going the extra mile to preserve an old historic structure. He said that what was proposed would slightly decrease some of the nonconformities on the property. He said that granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said the essential character of the neighborhood would not be altered because it would still be the same amount of density and use. Substantial justice would be done because the loss to the applicant if denied would not be outweighed by any gain to the public by requiring strict compliance with the setback requirements and lot coverage. He noted that the project still required approval from the Historic District Commission, so the public interest was protected in that respect. He said that granting the variances would not diminish the value of surrounding properties because the project was a substantial upgrade for the property, a preservation project that would save an old historic structure that would otherwise continue to fall into disrepair. He said the special conditions for hardship included the property being on a corner lot that straddled two different zones and having dimensional nonconformities like side setbacks that were really rear setbacks. He said that those were unique qualities that set the property apart from others in the neighborhood, so there was no fair and substantial relationship between the setback and lot coverage requirements and their application to the property. He said it was a reasonable use and met all the criteria. He noted that the stipulation was generous of the applicant and that a structural engineer would oversee the project and ease the neighbor's concern.

Mr. McDonell concurred with Mr. Mulligan. He said that Chairman Rheume was correct in stating that the applicant could do more to bring the property into further conformity, but he also noted that what the applicant was asking for was reasonable, given the historical use and the way things were squeezed in in that area. He said that, otherwise, he wouldn't think it was a reasonable request if it was coming from scratch. Chairman Rheume said he had some

reservations but would support the motion because of the stipulation. He said he would have been concerned about long-term maintenance related to setbacks if the project had started from scratch because the Board would generally want to see a greater setback. He said he drove by the carriage house often and that it looked like it would fall down any time, so he thought that the applicant's extra effort to preserve the structure was the right thing to do.

*The motion passed by unanimous vote, 6-0.*

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4) Case 2-4

Petitioner: Carrie Richesson  
 Property: 101 Martha Terrace  
 Assessor Plan: Map 283, Lot 5  
 Zoning District: Single Residence A  
 Description: Construct a 20'± x 24'± garage attached to the existing house by a 10'± x 10'± mudroom.  
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances from Section 10.521 to allow the following:  
 a) a 12'± secondary front yard where 30' is required; and  
 b) 16%± building coverage where 10% is the maximum allowed.

**SPEAKING IN FAVOR OF THE PETITION**

The applicant Carrie Richesson was present. She reviewed the petition and explained why she wanted to build the garage. She said the area would not be further developed due to the wetlands and woods. She said her neighbors were all in support, even the direct abutter who would be most affected by the project. She noted that the neighbors' garages were in the same style, with a mudroom and attached garage. She reviewed the criteria and explained how they would be met.

Mr. McDonell said the mudroom seemed to be pushing the project and asked the applicant if it was essential. Ms. Richesson said she did and that she had considered just attaching the garage but thought it would more appealing to have the separation with the mudroom. Chairman Rheume asked what the brown spot in the middle of the backyard was, as shown on the submitted tax map. Ms. Richesson said there was nothing there and that it did not count toward her footprint calculation. Chairman Rheume said the driveway had a significant curve for getting in and out of the garage, and he asked the applicant if she had tested it. Ms. Richesson said she wanted the driveway to skirt around the trees and that it was workable. The Board discussed moving the garage off Martha Terrace and refacing it toward Patricia Drive.

**SPEAKING IN OPPOSITION TO THE PETITION AND/OR  
 SPEAKING TO, FOR, OR AGAINST THE PETITION**

No one rose to speak, and Chairman Rheume closed the public hearing.

## DISCUSSION OF THE BOARD

Mr. Hagaman asked whether removing the existing driveway and having it go off Patricia Drive would require working with the Planning Department. Chairman Rheaume agreed and said it would also require input from the Department of Public Works. He said it would allow a wider garage but that it wouldn't be as deep. It was further discussed.

## DECISION OF THE BOARD

*Mr. McDonell moved to **grant** the variances for the application as presented and advertised, with the following stipulations:*

- The 12' secondary front yard is granted plus or minus 6" to allow for small deviations that may be encountered in the construction process.
- As long as the secondary front yard complies with the relief granted, the entrance to the garage can be facing either Martha Terrace or Patricia Drive.

*Mr. Lee seconded.*

Mr. McDonell said that he initially had trouble seeing what the hardship was but thought it was a narrow building window and that the applicant needed some kind of relief to do what she wanted to do, especially given what Patricia Drive was. He said that granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said the project would not conflict with the purpose of the ordinance and would not alter the neighborhood's character. He noted that it would look like a lot of other garages in the neighborhood. He said he was less concerned about the setback because it was 11-12 feet off the lot line, but it was almost 30 feet from the paved portion of Patricia Drive, so there would be no threat to the public's health, safety, or welfare. He said that granting the variances would do substantial justice because there would be no harm to the public. He said the only potential issue would be for the person living at the end of Patricia Drive but noted that she was okay with the project. He said he didn't see how any neighbors would be negatively affected and that granting the variances would not diminish the value of surrounding properties. As for hardship, he said that, relating to the building coverage request, the existing house was modest and the request was a modest one for an addition. He said the special conditions were the size of the lot and the fact that it was a corner lot that was sort of a driveway for one of the corner streets, which were conditions that distinguished the property from others in the area. He said he saw no relationship between the general purpose of the ordinance and its special application and felt that the proposed use was reasonable.

Mr. Lee concurred with Mr. McDonell and had nothing to add.

*The motion **passed** by unanimous vote, 6-0.*

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Mr. Mulligan recused himself from the petition, leaving five voting members. Chairman Rheume asked the applicant if he wished to proceed, and the applicant agreed.

6) Case 2-6

Petitioners: Vaughn Family Revocable Trust, Charles & Sally Vaughn, Trustees, owners, and Craig and Diane Alie, applicants

Property: 50 Pleasant Point Drive

Assessor Plan: Map 207, Lot 11

Zoning District: Single Residence B

Description: Second story addition and new two-story garage.

Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including variances from the following:

- a) from Section 10.521 to allow an 18'± secondary front yard for a vertical expansion of the existing dwelling where 30' is required;
- b) from Section 10.521 to allow a 21'± secondary front yard for a new two-story garage where 30' is required; and
- c) from Section 10.321 to allow a nonconforming structure or building to be expanded, reconstructed or enlarged without conforming to the requirements of the ordinance.

**SPEAKING IN FAVOR OF THE PETITION**

Attorney John Bosen was present on behalf of the applicant to speak to the petition. He said the applicants obtained a Conditional Use Permit. He reviewed the application and explained why the relief was necessary. He reviewed the criteria and said they would be met.

**SPEAKING IN OPPOSITION TO THE PETITION AND/OR  
SPEAKING TO, FOR, OR AGAINST THE PETITION**

No one rose to speak, and Chairman Rheume closed the public hearing.

**DECISION OF THE BOARD**

*Mr. Lee moved to **grant** the variances for the application as presented and advertised, and Mr. Hagaman seconded.*

Mr. Lee said it seemed like a good project that would improve the neighborhood compared to what was currently there, including a funky layout, the two streets, and a dated house, so granting the variances to rebuild the house would be a good thing. He said granting the variances would not be contrary to the public interest and the proposed use would not conflict with any explicit or implicit purpose of the ordinance. He said substantial justice would be done, in that the benefit to the applicant would not be outweighed by any harm to the general public. He said that granting the variances would not diminish the value of surrounding properties, noting that building a new house in that neighborhood would be an enhancement to the property values. He

said that literal enforcement of the ordinance would result in an unnecessary hardship to the applicant. He said the proposed use was a reasonable one.

Chairman Rheume noted that the hardships included that the lot was a corner lot burdened by some wetland buffer requirements that were driving the location of the garage, and that the house's existing location was such that any type of vertical expansion would require a need for some kind of relief. Mr. Hagaman concurred with Mr. Lee and Chairman Rheume and had nothing to add.

*The vote passed by unanimous vote, 5-0.*

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7) Case 2-7

Petitioners: Neil A. Fitzgerald Family Trust, Kara Moss and Linda Fitzgerald, Trustees

Property: 226 Park Street

Assessor Plan: Map 149, Lot 50

Zoning District: General Residence A

Description: Rear addition, single-story 410± s.f. detached accessory dwelling unit (DADU), and a detached one-car garage.

Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including variances from Section 10.521 to allow the following:

- a) a lot area per dwelling unit of 4,368± s.f. where 7,500 s.f. is required per dwelling unit; and
- b) 31%± building coverage where 25% is the maximum allowed.

The petition was withdrawn by the applicant.

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## **VI. OTHER BUSINESS**

No other business was presented.

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## **VII. ADJOURNMENT**

*It was moved, seconded, and passed by unanimous vote to adjourn the meeting at 8:05 p.m.*

Respectfully submitted,

Joann Breault  
BOA Recording Secretary