

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

7:00 P.M.

December 20, 2022

MEMBERS PRESENT: Beth Margeson; Paul Mannle; Phyllis Eldridge; Thomas Rossi; David Rheame; Jeffrey Mattson, Alternate

MEMBERS EXCUSED: David MacDonald

ALSO PRESENT: Stefanie Casella, Planning Department; Peter Stith, Planning Department

Former Chairman Jim Lee was not re-appointed, and Ms. Margeson was Acting-Chair for the evening. David Rheame was welcomed to the Board.

I. ELECTION OF OFFICERS

*Mr. Mannle **moved** to elect Ms. Eldridge as Chair, seconded by Mr. Rossi. The motion **passed** by unanimous vote, 6-0.*

II. APPROVAL OF MINUTES

A. Approval of the November 15, 2022 minutes.

Acting-Chair Margeson and Mr. Rheame abstained from the vote because they were not present at the November 15 meeting.

Mr. Rossi asked that the sentence in the second paragraph on p. 2 be amended to change the phrase 'as always 15.5 feet' to '**was** always 15.5 feet'.

*Mr. Rossi moved to **approve** the November 15 minutes as amended, seconded by Ms. Eldridge. The motion **passed** by unanimous vote, 4-0.*

Acting-Chair Margeson said there were two requests to postpone, Petition B, Old Business, for 635 Sagamore Avenue, and Petition G, New Business, for 915 Sagamore Avenue because Mr. Rossi had to recuse himself from both petition, leaving only five Board members to vote.

*Mr. Mannle moved to **postpone** the two petitions, seconded by Mr. Mattson.*

Mr. Mannle said that the Board typically granted requests to postpone.

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

III. OLD BUSINESS

A. Request for Rehearing - 53 Green Street. (LU-21-162)

Mr. Rossi said the petition had been heard twice by the Board on two different occasions and with two different Board member compositions and the results had been the same both times. He said he didn't see anything that would cause him to think that it should be reheard.

DECISION OF THE BOARD

*Mr. Rossi moved to **deny** the request for rehearing, seconded by Mr. Mannle.*

Mr. Rheaume said he was not on the Board at the time but had reviewed all the information provided by both parties and watched a substantial portion of the recording. He said he felt that the Board did a full deliberation and agreed with the motion.

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

B. REQUEST TO POSTPONE The request of **635 Sagamore Development LLC (Owner)**, for property located at **635 Sagamore Avenue** whereas relief is needed to remove existing structures and construct 4 single family dwellings which requires the following: 1) A Variance from Section 10.513 to allow four free-standing dwellings where one is permitted. 2) A Variance from Section 10.521 to allow a lot area per dwelling unit of 21,198 square feet per dwelling where 43,560 square feet is required. Said property is located on Assessor Map 222 Lot 19 and lies within the Single Residence A (SRA) District. **REQUEST TO POSTPONE (LU-22-209)**

DECISION OF THE BOARD

*It was moved, seconded, and passed unanimously (5-0) to **postpone** the petition, with Mr. Rossi abstained from the vote.*

IV. NEW BUSINESS

A. The request of Ann R Sherpick and Walter F Stewart (Owners), for property located at **88 Kensington Road** whereas relief is needed to remove an existing addition and construct a new addition which requires the following: 1) A Variance from Section 10.521 to allow 23% building coverage where 20% is the maximum allowed. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the

Ordinance. Said property is located on Assessor Map 152 Lot 22 and lies within the Single Residence B (SRB) District. (LU-22-201)

SPEAKING TO THE PETITION

Project designer Amy Dutton was present on behalf of the applicant and reviewed the petition. She said the structure was falling off the foundation and that they wanted to pour a new foundation to extend the addition five feet. She reviewed the criteria and said they would be met.

There were no questions from the Board. Acting-Chair Margeson opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Christine McCune of 71 Kensington Road said she lived across the street and was in favor.

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

DECISION OF THE BOARD

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

Mr. Mannle referred to Sections 10.233.21, .22, and .23 of the ordinance and said granting the variances would not be contrary to the public interest, would observe the spirit of the ordinance, and would do substantial justice. He noted that everything else was in the zoning except for a 1-1/2 percent increase in building coverage, which was small. Referring to Section 10.233.24, he said granting the variances would not diminish the values of surrounding properties but would increase them because the house would be renovated and have more room. He noted that the neighbor was also in favor. Referring to Section 10.233.25, he said literal enforcement of the provisions of the ordinance would result in unnecessary hardship because imposing the strict building coverage would be an unnecessary hardship in his estimation.

Mr. Rossi concurred. He referred to Section 10.233.25 and said the special condition of the property was that it had a very small area of 6,098 square feet, where the required area was 15,000 square feet, so it was already nonconforming. He said the suggested change maintained the lot line clearance, but because of the small square footage available on the lot, it easily went over the 20 percent maximum permitted building coverage. He said the use would be quite reasonable for the property. Referring to Sections 10.233.21 and 22, Mr. Rossi said the purpose for the SRB zone was to provide areas for single-family dwellings at low-to-medium densities, approximately 1-3 dwellings per acre and appropriate accessory uses. He said the applicant's house was a single-family dwelling and wasn't being changed from the use, so granting the variances would not be contrary to the public interest and would be consistent with the spirit of the ordinance.

Mr. Mattson said if the lot size were the required minimum lot size, they wouldn't need the variance for the coverage, so it was in the spirit of the ordinance. Mr. Rheaume said he also supported the motion. He noted that the adjacent property to the right had an addition that seemed identical to the

applicant's and there was a similarly-sized home on the other side, so it wasn't like the applicant was asking for anything out of the ordinary.

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

- B.** The request of **Ryan and Karen E Baker (Owners)**, for property located at **44 Gardner Street** whereas relief is needed to replace an existing porch with a sunroom addition which requires the following: 1) A Variance from Section 10.521 to allow 34% building coverage where 30% is the maximum allowed. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 103 Lot 42 and lies within the General Residence B (GRB) and Historic District. (LU-22-215)

SPEAKING TO THE PETITION

The applicant Ryan Baker was present. He said the project was approved in April 2020 by the BOA and the Historic District Commission (HDC) but expired in April 2022, so he was resubmitting the petition to construct the sunroom. He reviewed the petition, noting that it had minor updates to the original plan, and he reviewed the criteria.

Mr. Rheume said similar variances were also granted in September 2021, and he asked what the nature of those variances was and why they were not applicable. Mr. Stith said the prior owner came back with a different location for the mudroom and the variance was still valid but a building permit wasn't pulled for it. He said if Mr. Baker got his approval, he could not pull a building permit for both, otherwise the building coverage would go way up. Mr. Baker said he planned to resubmit it in the future, but he would change the location of the mudroom so it would be a new application. Acting-Chair Margeson asked if the building permit for the variance granted in 2022 would be pulled. Mr. Baker said it would not because that was approved for the previous owner. He said he was before the Board for the sunroom and would submit a new application for the mudroom.

Acting-Chair Margeson opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

*Ms. Eldridge moved to **grant** the variances as presented, seconded by Mr. Rheume.*

Ms. Eldridge said the change requested was very minor, 30 percent lot coverage that was 33 for many years and now was 34. She said granting the variances would not be contrary to the public interest because there really was no change to the building that had been there a long time. She said

it would observe the spirit of the ordinance because it would be in keeping and nothing would change. She said granting the variances would do substantial justice because it would provide the owner with what he wanted without any negative effect on the neighbors. She said if it affected surrounding property values, it would be in a positive manner. She said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because no one would be hurt by what would be a benefit to the owner. She said it was a reasonable request.

Mr. Rheume concurred. He said he was usually hesitant to let an applicant come back for a second bite of the apple, but the applicant was a new homeowner and was still trying to understand the property, so he thought it was a reasonable request to approve. He said the owner could potentially return for additional relief if he saw other needed improvements. He said the portion of the home affected was away from the streetscape, so it wouldn't impact the look and feel of the neighborhood, and the fact that the applicant was barely over the total coverage requirements wouldn't be noticed in the dense neighborhood. He said it would be in keeping with the public interest and the spirit of the ordinance. He also noted that the project was previously approved by the Board with the relatively small amount of coverage increase.

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

- C. The request of **Karen and Rick Rosania (Owners)**, for property located at **32 Boss Avenue** whereas relief is needed to allow an art studio for classes up to 8 people which requires the following: 1) A Variance from Section 10.440 to allow an art studio where the use is not permitted. Said property is located on Assessor Map 153 Lot 5 and lies within the Single Residence B (SRB) District. (LU-22-217)

SPEAKING TO THE PETITION

The applicant Karen Rosania said she wanted to teach small-scale art classes to adults and children in the studio attached to her home. She said parking was available for four vehicles in her driveway and there was plenty of street parking. She reviewed the criteria and said they would be met.

Mr. Rossi asked if there would be outdoor storage of art supplies or finished projects, and the applicant said there would not. He asked Mr. Stith why the use wasn't permitted under Section 19.10, accessory use to permit a principal use but not including any outdoor storage. Mr. Stith said it was a business use in the Single-Residence Zone and wouldn't qualify as a home occupation use because people would be coming in for the classes. It was further discussed. Acting-Chair Margeson said it was a business use in a residential zone.

Mr. Rheume asked why there were exit signs and a fire extinguisher shown on the plan if the applicant didn't have an approved use for a business use. Ms. Rosania said her mentor advised her to do so. Mr. Rheume said the applicant was asking to have a business use in an area that prohibited such business uses and asked why she would teach students in that location vs. finding an approved business location. Ms. Rosania said it had always been her dream to have her art studio attached to her house and make it an inviting space without having to worry about overhead and financial costs. Mr. Rheume said the illustration showed four parking locations in the driveway.

He said there were prescribed dimensions required for parking spaces for a business use. He asked if there was additional information on how the proposed parking spots would meet the City's requirements for a parking space, turning radius, and so forth. Ms. Rosania said she hadn't really thought about it and had hoped that people could just park in front of her home. Mr. Rheume asked what was unique about Ms. Rosania's property vs. those of her neighbors if they wanted to start their own businesses. Ms. Rosania said they could start their own businesses and that she was just trying to fulfill a dream. The City's parking requirements were further discussed. Mr. Stith said the Board could add conditions for a home occupation relating to setbacks from abutters and screening.

Acting-Chair Margeson opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Sara Lynch of 19 Sunset Road said she was also an art teacher and could attest that the applicant's proposed art studio was small and modest and would not be disruptive to the neighborhood.

Linda Leland of 26 Thaxter Road said she was excited by the studio because it would bring people together as a community to create art and would add value.

Sachiko Akiyama of 161 Aldrich Road said she was a university art professor and thought what the applicant did to her house already increased the value of the neighborhood. She said there was enough parking on the street and that it was expensive to run an arts business in Portsmouth.

Sandra Traverse said she was a board member for Arts In Reach, a youth development organization. She said they didn't have any physical art space and relied on artists like the applicant to donate their time and space.

Sharon Hartford of 59 Boss Avenue said she had concerns about parking because that end of Boss Street tended to get congested. She said she was also concerned that it would set a precedent for others who wanted to have a home business in an area not zoned for it.

Christine Powell of Kensington Street said the studio had good exits, so there was no fear of not being able to get out in case of fire. She said the driveway was big and deep and the street was wide at the bottom. She said she had lots of friends who wanted to attend the classes.

Eric Weinrieb of 9 Middle Street said he lived in the neighborhood and struggled with the location and the use. He said Sunset Street was one of the steepest in the City and had a very dangerous intersection, and there were lots of children in the area. He said if the parking was increased, it would also increase the traffic and would create a safety issue.

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

DISCUSSION OF THE BOARD

Mr. Rossi said he had a hard time seeing the hardship criteria satisfied. He confirmed with Mr. Stith that if the applicant only wanted to have people over to engage in the arts and not pay for classes, a permit wouldn't be required. He said the applicant could still fulfill her dreams if it wasn't a commercial enterprise. He also noted that the variance would stay with the property and the next person would be able to engage in a commercial activity in the future. Mr. Stith said it would have to be for what the variance was approved for but agreed that the variance and permit would stay with the property. Mr. Mattson said he struggled with the hardship for that property.

Mr. Rheume said the applicant wanted to do a wonderful thing but that it wasn't proposed be in the right place. He said it went through the City Council and the Planning Board, with lots of public input. He said one of the fundamental tenants of the ordinance was that it distinguished between the residential and business areas and the expectation was that the neighbors would do things associated with residential use and one wouldn't see a steady stream of customers coming in to perform something in a space for furthering themselves and/or the owner. He said the City prided itself on being receptive to artists, but there was nothing like that in the ordinance. He said the Board seemed to be asked to create a whole new area of the zoning ordinance by creating a new use called an art studio allowed in residential districts and create parking for it. He noted that there were strict requirements for business parking spots. He said a hardship didn't result from someone building something on their property and saying that the Board had to grant the ability to use the thing that the person just built. He said the project didn't meet the criteria. Mr. Mannle agreed.

DECISION OF THE BOARD

*Mr. Rheume moved to **deny** the request for a variance, seconded by Ms. Eldridge.*

Mr. Rheume said the request failed on two criteria and an art studio wasn't recognized by the ordinance. He said there were no businesses allowed in that district or in the most adjacent one, and he didn't see anything that would say that the property had anything unique about it as opposed to anyone else's property in the same district and say that it was qualified to have a business use placed on it. Ms. Eldridge concurred, noting that the art studio would be a good thing but just didn't meet the criteria. Mr. Rheume said the ordinance should be fluid but it had to go through the legislative process of the Planning Board balancing the needs of all the abutters and neighborhoods and making sure that it made sense and then recommending it to the City Council. He said the Board wanted to promote the arts but it was beyond the purview of the Board, especially for one night and for one short time. Mr. Mannle said he had no problem with the application or the parking issue but he didn't see the hardship.

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

- D.** The request of **Rudy Storylazy Holding LLC (Owner)**, for property located at **96 Chestnut Street** whereas relief is needed for conversion of existing office into residential which requires the following: 1) A Variance from Section 10.5A41, Figure 10.5A41.10A, to allow a) a lot area per dwelling of 2,046 where 3,000 square feet is required; and b) 14% open space where 25% minimum is required. 2) A Variance from

Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 116 Lot 24 and lies within the Character District 4-L1 (CD4-L1) and Historic District. (LU-22-220)

SPEAKING TO THE PETITION

Attorney Chris Mulligan was present on behalf of the applicant. He reviewed the petition, noting that the relief needed was to turn the business property back into a single-family residence. He said they also needed to put a small deck off the rear of the property to access the patio, which would increase the amount of open space coverage. He said the location for the proposed deck currently had two condensers and trash bins and wasn't usable open space. He said the African Burial Ground Memorial took over that portion of Chestnut Street, resulting in the loss of seven parking spaces and creating a pinch point for people visiting the establishment if it remained commercial. He reviewed the criteria and said they would be met.

Mr. Rheume said he was confused about the planned deck and asked if the intent was to bridge the gap between the opening and the wall. Attorney Mulligan explained that there was a curved bumpout and a sliding door would be installed, so the deck would be over the HVAC condensers. Mr. Mattson said he wasn't sure that there could be condensers under a deck without appropriate clearance for air flow. Mr. Rheume said the applicant would have to check that.

Acting-Chair Margeson opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

Eric Weinrieb of 9 Middle Road said his office was across the street from 96 Chestnut Street and that he had seen a lot of change in the area, especially with the African Burial Ground Memorial. He said converting the applicant's building to a residence would add vibrancy to that area by adding ground-floor residential, which the downtown area had lost of lot of lately. He said it would also improve pedestrian safety and remove the transient feel.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

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

Mr. Rheume said the applicant made a good case. He said the memorial was out of anyone's control and no one would have expected it to be in front of their property and that it did contribute to some of the criteria. He said the use was permitted in the CD4L1 district but the lot size wasn't quite adequate, and the request for additional open space to get out of the house to the patio made

sense. He said granting the variances would not be contrary to the public interest because there was a positive public interest with the memorial being there and a business in that area would invite more traffic and cause confusion due to the lack of parking in front of the building. He said the spirit of the ordinance would be met because it was an allowed use for an existing structure on a lot and to say that an existing structure on an existing lot that had been there a long time that was nonconforming and couldn't have a revised use that was a permitted one would seem to be against what the ordinance tried to accomplish. He said the loss of open space would be to the rear of the property and wouldn't be something the public would perceive. He said granting the variances would do substantial justice because the owner's ability to convert the house to a residential use by adding a way to get over to the existing patio area made more sense, and no public need would prevent the Board from allowing the property owner to take advantage of that. He said granting the variances would not diminish the values of surrounding properties because the changes were minor and the building looked like a residential one. He said the fact that it was an office building was probably more awkward and negative for neighboring properties, and converting it would bring it more in conformance and help surrounding property values. He said the hardship was that it was an existing lot with a structure on it for many years and the structure looked like it was a residence at first and was then converted. He noted that the ordinance now required more conformances and the minimal loss of open space wouldn't be a significant loss. He said it was a reasonable request.

Mr. Mattson concurred and had nothing to add.

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

- E. The request of **Stephen A and Kathryn L Singlar (Owners)**, for property located at **39 Holmes Court** whereas relief is needed for addition of a shed dormer, heat pump and new paved area which requires the following: 1) Variances from Section 10.521 to allow a) a 2' rear yard where 25' is required; and b) 22% open space where 25% is the minimum required. 2) A Variance from Section 10.515.14 to allow a 0' setback where 10' is required for a heat pump. 3) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 101 Lot 13 and lies within the General Residence B (GRB) and Historic District. (LU-22-226)

SPEAKING TO THE PETITION

Attorney Derek Durbin was present on behalf of the applicant, along with project engineer Eric Weinrieb and project architect Brendan McNamara via Zoom. Attorney Durbin reviewed the petition, noting that it was a unique property because the public portion of the right-of-way ended at the front boundary of the property and then turned into a private driveway into 43 Holmes Court, which was owned by the same owners. He said the dormer was needed for more livable space. He reviewed the criteria and explained why they would be met.

In response to Mr. Rheume's questions, Attorney Durbin said 43 Holmes Court ended at the front boundary of 39 Holmes Court and then became private. He said there was an easement across 39

Holmes Court for access to 43 Holmes Court. He said they wanted the 2-ft setback for the dormer out of caution. In answer to further questions from Mr. Rheume, Mr. McNamara said the dormer was visually recessed from the continuation of the side wall, which was driven by appeals to the HDC. He said the heat pump would be placed on the side of the house vs. the back so that it wouldn't annoy the neighbors and that there would be sufficient space between the heat pump and the building for air ventilation.

Acting-Chair Margeson opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

*Mr. Rossi moved to **grant** the variances as presented and advertised, seconded by Mr. Rheume.*

Mr. Rossi said granting the variances would not be contrary to the public interest, supported by the fact that the design called for the addition of a dormer, which didn't really change the footprint of the structure itself. He said the only place where the change would be visible would be the adjacent property that was owned by the same owner. He said granting the variances would do substantial justice because there would be no gain to the public by denying the request and there would be an advantage to the owner and to the property's value by approving the variances. He said granting the variances would not diminish the values of surrounding properties, noting that the closest affected property was owned by the same owner and he was in the best position to judge whether the changes on one of his properties would diminish its value. He said the special condition of the property was that it was already nonconforming and there was nothing being done that would change the degree of nonconformance other than the heat pumps. He said he did not believe that the intent of the ordinance was to prevent the modernization of HVAC systems in antique homes. Therefore, he said he didn't think there was any relationship between the installation of heat pumps and the intent of the ordinance.

Mr. Rheume concurred. He said that type of New Englander lent itself to those types of roof dormers and it was a common way for homeowners to add extra square footage. He said normally the Board was concerned about setbacks and light and air to abutting properties, but the applicant owned both properties. He said window units were allowable but tended to be noisier than modern heat pumps condensers. He said zero-foot setbacks made him nervous but in this case it was common ownership and it sounded like the applicant did his research and was trying to make the noise go toward his own property. He said he recommended approval.

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

- F. The request of Stephen A and Kathryn L Singlar (Owners), for property located at 43 Holmes Court** whereas relief is needed to demolish the existing dwelling and construct

a new single-family dwelling which requires the following: 1) Variances from Section 10.531 to allow a) a lot area of 5,353 square feet where 20,000 square feet is required; b) 0 feet of street frontage where 100 feet is required; c) 75' of lot depth where 100 feet is required; d) a 17 foot front yard where 30 feet is required; e) a 14 foot left side yard where 30 feet is required; and f) a 14 foot right side yard where 30 feet is required. 2) A Variance from Section 10.440, Use # 1.10 to allow a single family dwelling where the use is not permitted. Said property is located on Assessor Map 101 Lot 14 and lies within the Waterfront Business (WB) and Historic District. (LU-22-227)

SPEAKING TO THE PETITION

Attorney Derek Durbin was present on behalf of the applicant to review the petition, with project architect Brendan McNamara via Zoom and project engineer Erik Weinrieb. He noted that the 1749 single-family home was in poor shape and located in a flood zone. He said it couldn't be raised and that the only feasible thing to do was demolish it. Mr. McNamara said once a level of expenditure was exceeded on a home, it must meet current code and it would have to meet the flood zone requirements. He said lifting it up would exceed the expenditure, which would then initiate the rest of the house to meet existing code. He said the project got favorable feedback from the HDC work session. Attorney Durbin said the only nonconformance that would increase was the front yard setback. He reviewed the criteria and said they would be met.

Mr. Rossi asked if the grayed-out lots on the diagram were waterfront businesses except for one. Attorney Durbin agreed. Mr. Rossi said if the Board granted the variance, they would be continuing to restrict the small amount of waterfront available for business use, and he struggled with the propriety of doing that. Attorney Durbin said the home would be dysfunctional otherwise and would mitigate the flood risk. Mr. Rossi asked if the fact that it was already a residential use was a special condition of the property that created a hardship, and Attorney Durbin agreed. Acting-Chair Margeson said the flood zone was at eight feet and the City added a foot over that. She asked why the applicant didn't apply for a variance for relief for the extra foot to get out of the flood zone. Attorney Durbin said the true intent and best approach was to improve the property by demolishing the home and building a new one at a higher elevation. Mr. Weinrieb said the flood ordinance stated if it there was substantial renovation, the building had to be lifted to one foot above, but new construction was two feet above. He said the buffer wasn't just for the new FEMA ordinances but also climate changes. It was further discussed.

Acting-Chair Margeson said she knew the HDC would deal with the property's demolition, but one of the criteria of the BOA when the property was in the Historic District was preservation of historic structures in the Historic District. She asked why the home had to be demolished. Attorney Durbin said it was in such rough shape that there wasn't a lot to salvage, and there was the floor elevation issue. Mr. McNamara said a site walk was done with the HDC and the exterior appearance of the house was of the late 1800s. He said the house had been reworked a few times and there was very little of the original structure left, except for the interior first floor. He said the concrete foundation was falling apart. He said the building code's requirements drove the need for demolition. Acting-Chair Margeson asked why the building couldn't be converted to a commercial use. Attorney Durbin said it would have to be a small waterfront marine-related use. He said the

area felt like a residential neighborhood and the applicant's property would be a nuisance and would have to be accessed via a residential property.

Acting-Chair Margeson opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DISCUSSION AND DECISION OF THE BOARD

Mr. Rossi said the argument that the building already had a residential use was compelling. Mr. Rheume said that only so many properties could fall into the waterfront business. He said he was an advocate of protecting every square inch of that waterfront but the applicant's property was so different and so isolated. He said the intent when it and the neighboring property was included in the waterfront district was that there might be some way of redoing it, but from a practical standpoint, he thought it would be negative to squeeze some business from a place that hadn't any had for a very long time. He said the nature of Holmes Court was such that it would be impractical to justify saying that it really contributed to the character of the waterfront businesses. He said it was a great thing for the City to try to preserve as much of the waterfront and keep that vibrancy aspect, but in the applicant's case, it didn't work and it made sense for the property to remain a residential use. (See meeting recording 2:55:07 for full summary). Acting-Chair Margeson said she would not support the application. She said demolition was within the HDC's purview but she didn't find the applicant's argument for demolishing persuasive. She said many buildings had different elements from different time periods and many foundations had to be lifted and replaced with new ones. She said she felt that the application failed the spirit and intent of the ordinance.

*Mr. Rossi moved to **grant** the variances as presented and advertised, seconded by Ms. Eldridge.*

Mr. Rossi said the overarching issue was the fact that the Board was trying to judge the compliance of the residential use property according to the standards of the Waterfront Business Use Zone criteria, which he felt was a misapplication of those standards. He said the property wasn't one that lent itself to the intended purpose of waterfront business, so he thought it should be judged more in accordance with the residential use in the surrounding zone areas. He said that was the relevant fact that spoke to all the variance evaluation criteria and that he wouldn't repeat them one by one. Ms. Eldridge concurred and said granting the variances would not be contrary to the public interest because the residential use on a residential street area seemed appropriate. She said it would observe the spirit of the ordinance and would do substantial justice to what the property had been over the years. She said it didn't seem right to suggest that the property really belonged in another zoning district, given the concerns of the neighborhood and the private road. She said granting the variances would not diminish the values of surrounding properties and would most likely increase them. She said there were the flood plain concerns and the weakness of the structure, and the fact that the HDC had allowed demolition. She said there was a reason that the building could be torn down and she felt that a new building would increase property values. She said the hardships were many. Mr. Rossi added that the special condition of the property was that it was landlocked and the

access to it was extremely restricted, which prohibited the use in the way the zoning ordinance spoke to – a waterfront business. Mr. Mannle said if the property was on the next street or on Pickering Avenue, he'd agree with preserving it. He said if the applicant wanted to change it back to a waterfront business, it would probably fail on 2-3 criteria, even though they could do the waterfront business by right because the surrounding areas had changed so dramatically.

*The motion **passed** by a vote of 5-1, with Acting-Chair Margeson voting in opposition.*

It was moved, seconded, and passed unanimously to hear the meeting past 10:00 p.m.

G. REQUEST TO POSTPONE The request of **Nissley LLC (Owner)**, for property located at **915 Sagamore Avenue** whereas relief is needed to demolish the existing building and construct a new mixed-use building which requires the following: 1) A Variance from Section 10.440 to allow a mixed-use building where residential and office uses are not permitted. 2) A Variance from Section 10.1113.20 to allow parking to be located in the front yard and in front of the principal building. 3) A Variance from Section 10.1114.31 to allow 2 driveways on a lot where only one is allowed. Said property is located on Assessor Map 223 Lot 31 and lies within the Waterfront Business (WB) District. **REQUEST TO POSTPONE (LU-22-229)**

DECISION OF THE BOARD

*It was moved, seconded, and passed unanimously (6-0) to **postpone** the petition.*

H. The request of **Luke J. Brindamour and Sara C. Brindamour (Owners)**, for property located at **653 Greenland Road** whereas relief is needed to add an 8' tall fence which requires the following: 1) A Variance from Section 10.515.13 to allow an 8' tall fence along the property line and not adhering to the required yard setbacks. Said property is located on Assessor Map 259 Lot 31 and lies within the Single Residence B (SRB) District. (LU-22-231)

SPEAKING TO THE PETITION

The applicant Luke Brindamour was present to review the petition. He said he wanted to leverage the existing 6-ft and 8-ft fences for the majority of the property's perimeter and that the abutters were in approval. He reviewed the criteria and said they would be met.

Mr. Mannle asked if the applicant wanted to just connect the gaps in the fence. Mr. Brindamour said he would use the existing parts of the 6-ft and 8-ft fences for the same existing lengths but the height would be 8 feet around the yard's perimeter and then taper off to six feet. Mr. Rheume said the photo showed the current 8-ft fence abutting the neighbor's property and had a note that said 'new line from survey'. He asked if a survey was done. Mr. Brindamour said he thought it was appropriate to have a survey done to inform his neighbors of the findings. In response to further questions from Mr. Rheume, Mr. Brindamour said the intent was to move the fence closer to the

property line and continue it along the property line with the 8-ft fence as close as practical. Mr. Rheume asked if the 8-ft fence would mimic the topography and level things out, and Mr. Brindamour agreed. Mr. Rossi asked why the new fence had to be eight feet instead of six feet. Mr. Brindamour said his neighbor preferred an 8-ft fence. He said it was also a privacy issue for the neighbors and would keep his dog in the yard. It was further discussed.

Acting-Chair Margeson opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DISCUSSION AND DECISION OF THE BOARD

Mr. Rheume said there used to be nothing in the zoning ordinance about fence heights but it was added because people were putting up tall fences on compact properties. He said in the case of a large property like the applicant's with a fair division between properties, the difference between six feet and eight feet was probably not that tremendous if the application made reasonable use of the different heights of fencing. Mr. Mattson said it didn't seem to be a 'spite' fence. Ms. Eldridge said it was on a busy street, so it made sense that the former owners put up a tall fence for privacy, and it wasn't taking light from anyone. Acting-Chair Margeson said she would not support the application because she didn't think the applicant had demonstrated a hardship.

*Mr. Rheume moved to **grant** the variance as presented and advertised, seconded by Ms. Eldridge.*

Mr. Rheume said granting the variance would not be contrary to the public interest, noting that it was a large lot with a substantial separation between the house and its neighbors, and a 6-ft fence would be allowed by right. He said there was a sense of noise from Greenland Road and the newer road farther away, but in terms of the public saying that the fence would be bothersome in general, he didn't see how that would be the case with a 2-ft difference. He said the neighbors would be in favor of additional privacy and the fence would help with noise elements associated with dogs and kids. He said granting the variance would observe the spirit of the variance, noting that fence control was added to the ordinance to prevent 'spite' fences between neighbors, but he didn't see that in the applicant's case because the applicant was trying to take advantage of the existing fence. He said substantial justice would be done because the public benefit would outweigh the applicant's desire to have the higher fence and ensure additional privacy and so on, and he didn't think there was any public benefit, especially in that wide-open neighborhood. He said granting the variances would not diminish the values of surrounding properties, especially with the large lots involved and the amount of fencing and no indication from the neighbors or public that it would. Relating to hardship, he said the fence ordinance applied across the City and the small properties tended to outweigh the large ones. He said the applicant's property was one of the bigger lots in Portsmouth, which in some ways diminished some of the impact of the very broad requirement in the fence ordinance and was an important factor. He said the applicant had a long-standing fence without seemingly having caused negative aspects to the neighbors, so he felt that there was no substantial

relationship by saying that reducing the fence by two feet in those areas would make a big difference. He said the variance request was reasonable and should be approved.

Ms. Eldridge concurred and had nothing to add.

*The motion **passed** by a vote of 4-2, with Mr. Rossi and Acting-Chair Margeson voting in opposition.*

- I. The request of **Paula and Joe Lewinski (Owners)**, for property located at **187 Union Street** whereas relief is needed for renovation of the existing dwelling including demolition of a small addition and expanding the existing structure which requires the following: 1) A Variance from Section 10.521 to allow a 0' secondary front yard where 2 feet (per Section 10.516.10) is required. 2) A Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 135 Lot 68 and lies within the General Residence C (GRC) District. (LU-22-238)

SPEAKING TO THE PETITION

The applicant Joe Lewinski was present and reviewed the petition and criteria. Mr. Rheume asked if a survey was done to validate the zero-foot line. Mr. Lewinski said they were just going off the GPS lines. Mr. Rheume asked Mr. Stith if the foundation would trigger a survey. Mr. Stith said typically the Inspection Department would do an as-built survey for the addition. Mr. Mattson asked if a variance would still be required if the addition on Coffins Court was rebuilt and set back two feet. Mr. Stith said it would not. Mr. Mattson asked Mr. Lewinski if he had considered moving the small addition just two feet from Coffins Court. Mr. Lewinski said he had but decided to keep it along Coffins Court with the rest of the building for aesthetic purposes.

Acting-Chair Margeson opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Cari Feingold of 199 Union Street said it made sense to keep it where it was because of aesthetics and that it was part of the change and growth happening in the neighborhood and Portsmouth.

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

DECISION OF THE BOARD

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

Mr. Mannle said granting the variances would not be contrary to the public interest because the improvements, especially on the side of the house, would be a benefit. He said the spirit of the ordinance would be observed because only a 2-ft variance for the back demolition of the house was

being asked for, whereas the rest of the house would be there. He said granting the variances would do substantial justice because it was a small request to line up with the rest of the house. He said the of surrounding properties would not be diminished and would most likely increase. He noted that the property was unique because it was located on the corner of Union Street and a public accessway, and the property had special conditions that distinguished it from other properties in the area. Owing to those special conditions, he said a fair and substantial relationship did not exist between the general public purposes of the ordinance's provisions and their specific application to that provision of the property. He said the proposed use was a reasonable one. Mr. Rossi concurred. He referred to the spirit of the ordinance being observed and said the spirit of General Residence C was for single-family, two-family, and multi-family dwellings, and there was nothing about the proposal that diminished the suitability of the property to meet that purpose. He said a special condition of the property was that it already had a zero clearance all the way up the outline of the building along Coffins Court.

Mr. Rheume agreed that it was only two feet but thought it was an important two feet. He said the City tried to avoid zero-foot setbacks when they could, and he thought the applicant's new foundation might trigger the need for a survey. He thought the aesthetics of the continuing wall along the streetscape wasn't that critical, but a zero-foot setback when one could have no need for a variance at all was a big ask. He said he would vote in opposition.

*The motion **passed** by a vote of 5-1, with Mr. Rheume voting against the petition.*

Mr. Rheume recused himself from the following petition and left the meeting.

- J.** The request of **Linda J Mayrand (Owner)**, for property located at **44-46 Rockingham Street** whereas relief is needed for after the fact variance for a rear deck expansion and stairs which requires the following: 1) Variances from Section 10.521 to allow a) an 8 foot side yard where 10 feet is required; and b) 46% building coverage where 35% is the maximum allowed. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 144 Lot 14 and lies within the General Residence C (GRC) District. (LU-22-230)

SPEAKING TO THE PETITION

Attorney Brian Barrington was present on behalf of the applicant to review the petition. He said the 1830 property was a duplex and that the doors required decks big enough for life and safety code access and handicapped persons. He reviewed the criteria and said they would be met.

Mr. Rossi asked how the petition turned out to be an after-the-fact variance request. The owner Linda Mayrand was present and said sheetrock was put up between the two units around 2002 and she thought the paperwork was done for the permitting but then discovered that it wasn't.

Acting-Chair Margeson opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

*Mr. Rossi moved to **grant** the variances as presented and advertised, seconded by Ms. Eldridge.*

Ms. Eldridge said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. She said the deck needed to be there and it was only a two percent increase in building coverage and would be behind the house. She said substantial justice would be done because the deck was an essential part of the structure and a smaller deck wouldn't allow for safety concerns. She said granting the variances would not diminish the values of surrounding properties, noting that there was already a deck there. She said literal enforcement of the ordinance would result in an unnecessary hardship. She said two percent was a very slight change to the property coverage and the size of the decks was necessary for the building residents' safety. She said the hardship was that, in order to create a deck to meet the safety standards, the lot coverage had to increase. She said the variances should be approved.

Mr. Rossi concurred and had nothing to add.

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

V. OTHER BUSINESS

There was no other business.

VI. ADJOURNMENT

The meeting adjourned at 11:00 p.m.

Respectfully submitted,

Joann Breault
BOA Recording Secretary