

**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 23, 2022

Continued from the February 15, 2022 meeting

MEMBERS PRESENT: Arthur Parrott, Chair; Jim Lee, Vice Chair; David MacDonald, Beth Margeson, Thomas Rossi, Paul Mannle; Phyllis Eldridge, Alternate

MEMBERS EXCUSED: None.

ALSO PRESENT: Peter Stith, Planning Department

Chairman Parrott stated that the applicant for Item C, One Market Square LLC asked that the petition be postponed to the March 15 meeting.

*It was moved, seconded, and unanimously passed (7-0) to take the item out of order. Mr. Rossi moved to **postpone** Item C to the March 15 meeting, and Vice-Chair Lee seconded.*

Mr. Rossi said it was a reasonable request. Chairman Parrott noted that the Board often got requests for postponements and approved them.

*The motion **passed** by unanimous vote, 7-0.*

Chairman Parrott said Item E, the Appeal of Duncan McCallum, was on hold due to the stay on the proceedings placed by the Superior Court and would be postponed to the March 15 meeting.

*Vice-Chair Lee moved to **postpone** the appeal to the March 15 meeting, noting that the item has been stayed by a Superior Court order. It was seconded by Mr. Mannle. The motion **passed** by unanimous vote, 7-0.*

I. NEW BUSINESS

- A) The request of **230 Commerce Way LLC (Owner)**, for the property located at **230 Commerce Way** whereas relief was needed to construct a new Veterinary Care building which requires the following: 1) A Special Exception from Section 10.440 Use #7.50 to allow a Veterinary Care use in a district where it is allowed by Special Exception. Said property is shown on Assessor Map 216 Lot 5 and lies within the Office Research (OR) district. (LU-22-14)

SPEAKING TO THE PETITION

Attorney Justin Pasay was present on behalf of the applicant, along with project engineer Patrick Crimmins and Jeffrey Roth, Director of Real Estate and Facilities at Ethos Veterinary Health. Attorney Pasay reviewed the petition and said the current facility wasn't big enough to provide necessary services and that patients had to be turned away. He noted that Port City already had a variance for the same use but would simply move across the street. Mr. Crimmins said the expansion site had a 50,000-square foot office building with a large parking lot. He said the proposed project would be isolated in the back of the property and would be more conforming in terms of parking and would also have environmental improvements, including a decrease of impervious surface and an upgraded stormwater system. He said the project team previously met with the Technical Advisory Committee (TAC), the Conservation Commission, and the Planning Board. He said there were no red flags related to municipal services and that they also did further pedestrian and traffic signal improvements. Attorney Pasay reviewed the special exception criteria and said they would be met.

Mr. MacDonald said there were small residential structures in the area and asked if any input was received from those residents about the project. Attorney Pasay said they had not sought or received any input. Vice-Chair Lee said he did a site visit and asked why another curb cut to access the property was necessary since there seemed to be plenty of room. Attorney Pasay said the use necessitated that people see and find the building, and coming out of Commerce Way was a bit more complicated. Vice-Chair Lee asked if there would be signage directing emergency patients to the facility. Mr. Crimmins said the facility's signage would be in line with the signage all along Commerce Way. Ms. Margeson asked how many more animals would be accommodated by the expansion. Mr. Roth said 40 percent of their business was emergency patients and 60 percent was scheduled specialty services, and the duration of each pet visit was widely disparate. He said he didn't know a specific number for how many more animals could be accommodated but that the existing 15 year-old facility was restrictive and not up-to-date for changes in medicine and only had a certain square footage for cage space and so on.

The Board had no more questions, and Chairman Parrott opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

No one spoke.

SPEAKING IN OPPOSITION TO PETITION

Abigail Gindele of 229 Clinton Street said she was on the Conservation Commission but was speaking as a private citizen. She said it was a great project but that she objected to the cut-through for the driveway. She said the applicant would have to chop off a lot of the trees that divide the lanes on Portsmouth Boulevard -- trees that she felt should be kept because they were good for keeping speeds down and were also a nice aspect for the Osprey Landing residents. She said a swatch would also have to be cut through the glen of old trees near the 230 Commerce Way parking lot. She said there was already a turning lane designed for Commerce Way and that

the parking area had wide lanes between the spaces that could fit two cars coming and going. She said there wouldn't be a problem if the applicant had good signage at the entrance and within the parking lot and that the glen of trees didn't have to be destroyed to put in more paved surface.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Attorney Pasay said the issues would be discussed with the Conservation Commission and the Planning Board where they were more in purview.

No one else spoke, and Chairman Parrott closed the public hearing.

DECISION OF THE BOARD

*Mr. Macdonald moved to **grant** the special exception for the project as presented, and Ms. Margeson seconded.*

Mr. MacDonald said granting the special exception would pose no hazard to the public or adjacent properties on account of potential fire, explosion, or release of toxic materials. He said the applicant wasn't proposing a manufacturing facility or one that had high risk for any of those potential catastrophic consequences. He said the project would pose no detriment to property values in the vicinity or changes in the essential characteristics of any area including residential neighborhoods and business or industrial districts on account of the location or scale of buildings and other structures, parking areas, accessways, odors, gas, dust, smoke or other pollutants, noise, glare, heat, vibration, or unsightly storage of equipment, vehicles or other materials. He said one didn't have to worry about any of those things because the facility was an animal hospital. He said granting the special exception would pose no creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity because the project would accommodate growth that would not endanger or inconvenience traffic flow in the area or create any safety hazards. He said it would pose no excessive demand on municipal services including but not limited to water, sewer, waste disposal, police and fire protection, and schools. He said those questions almost answered themselves in the case of a veterinary hospital and that TAC would certainly resolve those issues. He said granting the special exception would pose no significant increase of stormwater runoff onto adjacent properties or streets. He said expanding the lot coverage with pavement could cause drainage questions to arise, but he didn't think that what was shown in the plans would create any problems that couldn't be resolved later. He said the project met the special criteria.

Ms. Margeson said it was really just moving the building across the street and was an expansion of 10,000 square feet. She thanked Ms. Gindele for coming before the Board to state her concerns but said the Board had to consider the criteria of posing no creation of a traffic safety hazard with respect to the middle of the street and the curb cut, and she didn't think the applicant ran afoul of that. She said she would support the motion to approve.

*The motion **passed** by unanimous vote, 7-0.*

- B) The request of **HCA Realty (Owner)**, for the property located at **0 Borthwick Avenue** whereas relief was needed to construct a remote parking area for hospital use which requires the following: 1) A Variance from Section 10.113.41 to allow a 35 foot front setback for a parking lot where 50 feet is required. 2) A Special Exception from Section 10.113.112 to allow a parking lot on another lot in the same ownership as the lot in question within 300 feet of the property line of the lot in question. Said property is shown on Assessor Map 234 Lot 7-4A and lies within the Office Research (OR) District. (LU-22-15)

SPEAKING TO THE PETITION

Attorney Justin Pasay was present on behalf of the applicant, along with project engineer Patrick Crimmins, hospital CEO Dean Carucci, and hospital COO Matt Larkin. He asked for an additional five minutes to review the petition because it was a bifurcated one.

The Board agreed by unanimous voice vote to allow five additional minutes for the presentation.

Attorney Pasay reviewed the petition. He said the hospital was experiencing growth and that the off-street parking wasn't adequate because the campus only had 783 total parking spaces. He said the medical office and hospital needed a minimum of 1,152 spaces. He said a 520-space satellite parking lot was proposed on the lot across the street that would accommodate overflow patients and visitor parking for a total of 1,303 parking spaces. He said the property was oddly configured and shallow compared to other lots of that size in the area, and there were significant wetlands on the eastern side of the property, a private road on the western end, and a huge power line easement in the middle. He said there were no other alternatives for parking in the area, so they needed a special exception to permit the satellite lot and a variance to permit a front setback of 35.4 feet. Mr. Crimmins said the reason for the variance was an environmental one so that the wetland buffer wasn't impacted, and he reviewed the setback areas. He said they proposed two curb cuts, several connectivity paths like sidewalks and a crosswalk, tree maintenance, and further safety measures like pedestrian flashing signals. He said stormwater management issues would be dealt with through the local and State processes and no municipal utilities were needed. Attorney Pasay reviewed the special exception criteria and said they would be met.

In response to Chairman Parrott's questions, Mr. Crimmins said there would be a provision for snow removal and storage that would be reviewed by TAC, and a sheltered waiting area would be constructed at the bus top that would meet all setbacks.

Attorney Pasay then reviewed the variance criteria and said they would be met.

There were no further questions from the Board. Chairman Parrott opened the public hearing.

SPEAKING IN FAVOR OF OR IN OPPOSITION TO THE PETITION, OR SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chairman Parrott closed the public hearing.

DECISION OF THE BOARD

Vice-Chair Lee suggested that the variance and special exception requests be taken together. He said it was a straightforward request for a parking lot in a great location and that the hospital was badly in need of more parking spaces.

*Vice-Chair Lee moved to **grant** the variance and special exception for the petition as presented and advertised, and Mr. Mannle seconded.*

Vice-Chair Lee said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said it was an innocuous request to allow the applicant's parking lot to conform to the site better. He said substantial justice would be done because any potential benefit to the public would not be outweighed by any harm to the applicant. He said granting the variance would pose no diminution of values to surrounding properties because the property was in a medical office area. He said literal enforcement of the provisions of the ordinance would result in unnecessary hardship because it was the only sensible location to build a parking lot to accommodate the facility's parking needs, and any hardship to the applicant would not be outweighed by any harm to the general public.

Vice-Chair Lee said granting the special exception would pose no hazard to the public or adjacent properties on account of potential fire, explosion, or release of toxic materials; and no detriment to property values in the vicinity or change in the essential characteristics of any area including residential neighborhoods, business or industrial districts on account of the location or scale of buildings and other structures, parking areas, accessways, odors, gas, dust, smoke or other pollutants, noise, glare, heat, vibration, or unsightly storage of equipment, vehicles or other materials. He said it was simply a parking lot and none of that would apply. Because of the access proposed and the fact that it was a parking lot, he said granting the special exception would pose no creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity. He said it would pose no excessive demand on municipal services including but not limited to water, sewer, waste disposal, police and fire protection, and schools nor pose a significant increase of stormwater runoff onto adjacent properties or streets. For all those reasons, he said the variance and special exception should be granted. Mr. Mannle concurred and had nothing to add.

*The motion **passed** by unanimous vote, 7-0.*

C) **REQUEST TO POSTPONE** The request of **One Market Square LLC (Owner)**, for the property located at **1 Congress Street** whereas relief is needed to construct a 3 story addition with a short 4th story and building height of 44'-11" which requires the following: 1) A Variance from Section 10.5A.43.31 and Map 10.5A21B to allow a 3-story addition with a short 4th and building height of 44'-11" where 2 stories (short 3rd) and 35' is the maximum allowed. Said property is shown on Assessor Map 117 Lot 14 and lies within the Character District 5 (CD-5). **REQUEST TO POSTPONE** (LU-22-12)

DECISION OF THE BOARD

*It was moved, seconded, and passed by unanimous vote (7-0) to **postpone** the petition to the March 15 meeting.*

Ms. Eldridge was recused from the following petition.

- D) The request of **Theodore M. Stiles (Owner)** for the property located at **28 South Street** whereas relief was needed to add two rear additions to the existing dwelling which requires the following: 1) Variances from Section 10.521 to allow a) 30.5% building coverage where 30% is the maximum allowed; and b) a 5' left side yard where 10' 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 shown on Assessor Map 102 Lot 43 and lies within the General Residence B (GRB) district. (LU-22-8)

SPEAKING TO THE PETITION

Project architect Anne Whitney was present on behalf of the applicant and reviewed the petition. She said the two additions were proposed to create an access to the backyard and from the kitchen to the dining room, and to create more living space in the kitchen and great room side of the building. She said the additions would be on the rear of the house and only visible from Marcy Street. She reviewed the criteria, pointing out that the additions were in context with the neighborhood and would not adversely affect adjacent properties, and the special condition was the nonconformity of the existing residence mainly to the side setback.

The Board had no questions. Chairman Parrott opened the public hearing.

SPEAKING IN FAVOR OF OR IN OPPOSITION TO THE PETITION, OR SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chairman Parrott closed the public hearing.

DECISION OF THE BOARD

*Mr. MacDonald moved to **grant** the variance for the petition as presented, and Mr. Mannle seconded.*

Mr. MacDonald said he lived a few blocks away and was familiar with the property and the neighborhood. He said the only question not answered by the packet materials was the neighbors' reaction to the proposal but noted that there was one piece of correspondence received by the Board from neighbors Susan and William Manful in favor of the application. He said all the criteria were met and that the proposal was a straightforward one and had no public implications because the neighbors liked it. He said the variance should be approved.

Mr. Mannle concurred and said it was a small request for a 5-ft left side yard setback and half a percent over the maximum building coverage percentage allowed, was in a very dense neighborhood, and was absent of any neighborhood outrage. He said he saw nothing wrong with the request and that it had his support.

Ms. Margeson said she would support the variance request because it would bring the property more in compliance with the left yard setbacks, and the building coverage was more like 30.3 percent over the maximum allowed but wasn't a marked departure from the zoning ordinance. She said she had no problems with the application.

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

E) **REQUEST TO POSTPONE** The appeal of Duncan McCallum (Attorney for Appellants), of the December 16, 2021 decision of the Planning Board for property located at 31 Raynes Avenue, 203 Maplewood Avenue, and 1 Raynes Avenue which granted the following: a) site plan approval b) wetlands conditional use permit; and c) certain other, miscellaneous approvals, including an approval related to valet parking. Said properties are shown on Assessor Map 123 Lot 14, Map 123 Lot 13, Map 123 Lot 12, Map 123 Lot 10 and lie within the Character District 4 (CD4) District, Downtown Overlay District (DOD), Historic District, and the North End Incentive Overlay District. **REQUEST TO POSTPONE (LU-21-54)**

DECISION OF THE BOARD

*The Board acknowledged that the appeal was stayed by a Superior Court order. It was moved, seconded, and passed unanimously (7-0) to **postpone** it to the March 15 meeting.*

II. OTHER BUSINESS

There was no other business.

III. ADJOURNMENT

The meeting was adjourned at 8:30 p.m.

Respectfully submitted,

Joann Breault
BOA Recording Secretary