

**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 26, 2022

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

MEMBERS EXCUSED: None.

ALSO PRESENT: Peter Stith, Planning Department

Chairman Parrott called the meeting to order at 7:00 p.m.

Items F and G were taken out of order due to postponement requests.

*Mr. MacDonald moved to **grant** the request for postponement for Item F, 77 Meredith Way, to a future date. Vice-Chair Lee seconded.*

Mr. MacDonald said it was a reasonable request to postpone, and Vice-Chair Lee concurred.

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

*Mr. Rossi moved to **grant** the request for postponement for Item G, 64 Vaughan Mall LLC, to a future date, seconded by Ms. Eldridge.*

Mr. Rossi said it was apparent that the property owner wasn't ready to address some questions and issues, so it was reasonable to postpone the application. Ms. Eldridge concurred.

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

I. NEW BUSINESS

- A.** The request of **Amanda J. Telford Revocable Trust (Owner)**, for property located at **322 Lincoln Avenue** whereas relief is needed to amend previously approved demolition of existing carriage house and construction of new accessory structure which requires the following: 1) Variances from Section 10.521 to allow a) 35% building coverage where 25% is the maximum allowed; b) a 3'6" side yard where 10' is required; and c) a 13' rear yard where 20' 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 130 Lot 26 and lies within the General Residence A (GRA) District. (LU-22-59)

SPEAKING TO THE PETITION

The applicant Amanda Telford was present to review the petition. She said it was a resubmission of the previously-approved variances from October 2020 due to a design change and that the proposed building structure was now half the width. She referenced the previously-submitted criteria and noted that the carriage house was about to fall down and the values of surrounding property values would likely be increased. She said literal enforcement of the ordinance would result in an unnecessary hardship due to the special condition of the property being very narrow.

Mr. Rossi referred to Exhibit B, the signature page with notes from abutters who supported the project dated September 2020, and asked if any neighbors had moved since then. The applicant said the neighbors were the same as before and still supported the project. Ms. Margeson said the design was lovely but the porch seemed a bit weird on that kind of structure. She asked if there was any intent to make it an Accessory Dwelling Unit (ADU) at a later time. The applicant said there was no intent to do so. Ms. Margeson noted that if the Board granted the variances, they would grant them based in part on the plans the applicant submitted to them.

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. Rossi moved to **grant** the variances for the application as presented, seconded by Vice-Chair Lee.*

Mr. Rossi said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance because the project would maintain the neighborhood's status quo and would be in keeping with the characteristics of the rest of the surrounding properties. He said substantial justice would be done because there would be no public harm that would outweigh the benefit of the applicant. He said granting the variances would not diminish the values of surrounding properties, noting that the existing structure's revitalization would improve the property's values and have a positive effect on abutting properties. He said literal enforcement of the ordinance would result in unnecessary hardship. He said the unusual circumstance of the petition was that the requested variances were already approved and it was just a resubmission with a slight modification in the design, and it would be an undue hardship to change the Board's approval of the variance after all the time and effort invested by the property

owner. Vice-Chair Lee concurred and had nothing to add. Ms. Margeson said the right yard setback would be more in conformity with the ordinance and the building coverage was quite a bit over what was allowed but was just a slight increase in building coverage

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

- B.** The request of **William S. and Karen C. Bartlett (Owners)**, for property located at **607 Colonial Drive** whereas relief is needed to construct a 24' x 16' rear addition and 10'x 12' deck which requires the following: 1) A Variance from Section 10.521 to allow 25% building coverage where 20% is the maximum allowed. Said property is shown on Assessor Map 260 Lot 26 and lies within the Single Residence B (SRB) District. (LU-22-60)

SPEAKING TO THE PETITION

Amy Bartlett Brownrigg, the owner's daughter, was present on behalf of the owner. The architect Evan Mullen was also present. Ms. Bartlett-Brownrigg said the home was a modest single-family Cape Cod that needed substantial renovations. She said the proposal was to update the kitchen and build an addition for a laundry room and master bath. She reviewed the criteria and said the modest addition would be in the rear and there would be no change to the front of the building. She said substantial justice would be done because the addition would be similar to others in the neighborhood and would improve surrounding property values. She said the hardship was that the home was very small, and more accessibility for the owner was desired.

Mr. Rossi said the backyard sloped toward the fence and there were a lot of surrounding properties behind the fence, and he asked if the applicant had considered that increasing the coverage would have an impact on drainage and water flow to the neighborhood. Mr. Mullen said a gutter system would be installed as part of the addition to manage any stormwater runoff.

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. Mannle moved to **grant** the variances for the petition as presented, and Ms. Margeson seconded.*

Mr. Mannle said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said substantial justice would be done and the values of

surrounding properties would not be diminished. He said literal enforcement of the ordinance would be an unnecessary hardship. For those reasons, he said he would support the project. Ms. Margeson concurred and said the property, in relation to the surrounding ones, was definitely narrower, which was a special condition that distinguished it from the others.

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

- C. The request of **HCA Health SVC of NH (Owner)**, for property located at **333 Borthwick Avenue** whereas relief is needed for building an addition on the existing hospital which requires the following: 1) A Variance from Section 10.531 to allow a 40' front yard where 50' is required. Said property is shown on Assessor Map 240 Lot 2 and lies within the Office Research (OR) District. (LU-22-35)

SPEAKING TO THE PETITION

Chris Akers was present on behalf of the applicant and said he was a member of the hospital and architectural team. He said the proposed addition would house a radiation/oncology department in the hospital's southeast corner lot and would provide a new service for the hospital. He said the proposed location was due to conditions of a 300-ft electrical easement that ran across the property, and the variance request to go from 50 feet to 40 feet was necessary to meet code. He reviewed the criteria and said they would be met, noting that the addition would provide a new service for the community and that it would not diminish the values of surrounding properties because there were medical buildings across the street, along with an insurance agency. He said the hardship was the power line easement on the entire front of the property.

Mr. MacDonald asked if there was a plan to address the fact that parts of the property ran fairly close to the wetlands. Mr. Akers said they submitted a plan for a Conditional Use Permit (CUP) and would go before the Planning Board and the Technical Advisory Committee (TAC). Chairman Parrott asked if the proposed facility involved the use of large sources, such as cobalt-60. Mr. Akers agreed. Chairman Parrott asked if the nature of the work would include a protocol for periodic surveys outside the perimeter of the building to ensure that there was no leaking radiation. Mr. Akers said they worked with a physicist to make sure that the walls were properly designed and that there would be a monitoring and recordkeeping program.

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 moved to **grant** the variance for the application as presented, seconded by Ms. Margeson.*

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 would not conflict with any explicit or implicit purpose of the ordinance and would not alter the essential characteristics of the neighborhood or threaten the public's health, safety, or welfare. He said the values of surrounding properties would not be diminished, noting that it was an exclusive commercial/office/manufacturing area and there were no residences. He said literal enforcement of the ordinance's provisions would result in an unnecessary hardship due to the special conditions of the 300-ft power line easement that went right through the corner of the property and limited the places to put an addition.

Ms. Margeson concurred and had nothing to add.

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

- D.** The request of **Mark Griffin (Owner)**, for property located at **728 State Street, Unit 1** whereas relief is needed to demolish existing garage and construct a new garage which requires the following: 1) Variances from Section 10.521 to allow 61.5% building coverage where 35% is the maximum allowed. 2) Variances from Section 10.573.20 to allow a) a 1.5' side yard where 10' is required; b) a 0' front yard (Chatham St.) where 5' is required; and c) a 0.5' front yard (Winter St.) where 5' is required. 3) A Variance from Section 10.571 to allow an accessory structure in the front yard and closer to the street than the principal structure. 4) A Variance from Section 10.321 to allow a nonconforming structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 137 Lot 10-1 and lies within the General Residence C (GRC) District. (LU-22-63)

SPEAKING TO THE PETITION

Attorney Tim Phoenix was present on behalf of the applicant. He reviewed the petition and said the existing garage would be replaced with a new one in the same footprint but would be a bit smaller, with a sloped roof and a dormer. He reviewed the criteria and said they would be met, noting that the new garage would have less volume and would be more code-compliant. He said the hardship was due to the lot's special conditions of being very small, having a very small frontage, and having two front setback requirements and a side street one.

Mr. MacDonald said he looked at the property and agreed that it would benefit from a replacement garage. He asked who would park in the garage spaces. Attorney Phoenix said the applicant would because it was his unit and his garage, and that he would use all three bays. He said the plans indicated a workshop and some storage as well. Mr. MacDonald said there were six parking spaces on the adjoining property and asked how all those factors would play into the neighborhood's parking situation and whether there would be increased congestion or other

issues that might arise from changing the garage. Attorney Phoenix said the number of condo units and parking spaces would not change and the parking would remain the same.

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

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

Ms. Margeson said that at first glance it seemed like a lot of relief asked for, but it was actually for a replacement in kind of a structure. She said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. She said she didn't believe that there would be a marked degree of conflict with the ordinance that would violate its basic zoning objectives or that the project would alter the essential characteristics of the neighborhood or affect the public's health, safety, or welfare. She said the zoning district was one that allowed for multi-family dwellings, moderate densities, and accessory structures, and the proposed project was in keeping with that. She said granting the variances would not diminish the values of surrounding properties because the existing deteriorated garage would be replaced by an improved structure that would be a benefit to the surrounding properties. She said special conditions distinguished the property from others in the area, including that the lot was very tight with frontages on three streets, so there was no fair and substantial relationship between the general public purpose of the ordinance and its specific application in this instance. She said the use was reasonable one because it's an accessory use, which is allowed for a multi-family dwelling in this district. She said granting the variances would do substantial justice because there was no benefit to the public that would outweigh the hardship to the applicant. For those reasons, she said she would vote to approve the variance requests.

Mr. Mannle concurred, adding that the proposal would make a very nonconforming building slightly less nonconforming.

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

- E. WITHDRAWN** The request of **Portsmouth Lumber and Hardware LLC (Owner)**, for property located at **105 Bartlett Street** whereas relief is needed to remove two existing accessory structures and replace with one new shed which requires the following: 1) A Variance from Section 10.516.20 to allow a 6' setback where 15' is required from the railroad right of way. Said property is shown on Assessor Map 157 Lot 2 and lies within the Character District 4-W (CD4-W). **WITHDRAWN** (LU-22-58)

Chairman Parrott read the petition into the record. *The Board acknowledged that it was withdrawn by a vote of 7-0.*

F. REQUEST TO POSTPONE The request of **Randi and Jeff Collins (Owners)**, for property located at **77 Meredith Way** whereas relief is needed to construct a second free-standing dwelling which requires the following: 1) A Variance from Section 10.513 to allow a second principal structure on a lot. 2) A Variance from Section 10.1114.31 to allow 2 driveways on a lot where only 1 is allowed. Said property is shown on Assessor Map 162 Lot 16 and lies within the General Residence A (GRA) District. **REQUEST TO POSTPONE** (LU-22-61)

DECISION OF THE BOARD

*It was moved, seconded, and passed unanimously to **postpone** the petition to a future meeting.*

G. REQUEST TO POSTPONE The request of **64 Vaughan Mall LLC (Owner)**, for property located at **64 Vaughan Street** whereas relief is needed for the addition of a rooftop penthouse which requires the following: 1) A Variance from Section 10.5A43.30 and Map 10.5A21B to allow a building height of 51'6" where 42' is the maximum allowed for a penthouse. 2) A Variance from Section 10.1530 to allow a penthouse with a 9.5' setback from the edge of the roof where 15 feet is required. Said property is shown on Assessor Map 126 Lot 1 and lies within the Character District 5 (CD-5) and Downtown Overlay and Historic Districts. **REQUEST TO POSTPONE** (LU-22-65)

DECISION OF THE BOARD

*It was moved, seconded, and passed unanimously to **postpone** the petition to a future meeting.*

H. The request of **William H. Schefer Jr. and Donna Schefer (Owner)**, for property located at **994 South Street, Unit 2** whereas relief is needed to install a mini-split system which requires the following: 1) A Variance from Section 10.515.14 to allow a 1.5' setback where 10' is required. Said property is shown on Assessor Map 150 Lot 9 and lies within the Single Residence B (SRB) District. (LU-22-54)

SPEAKING TO THE PETITION

The owner Bill Schefer was present to review the petition. He said he and his wife had recently increased their use of air conditioning units and decided that a mini-split system would be a more efficient and quieter way to relieve the summer's heat. He said the unit would be placed in a small 21-inch side area. He said he talked to the abutter who owned a rental building and it was agreed that if the tenants thought the system was too noisy, a vinyl fence would replace the existing chain-link one. He reviewed the criteria, noting that the new unit would not really be noticeable from the street and would take up very little area, would not limit emergency access to

the house, and would raise his property values and not likely affect others. He said he would try to run the conduits through the basement window instead of up the side of the house.

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

SPEAKING IN FAVOR OF THE PETITION

Dexter Robblee of 2 Rand Court said he was a neighbor and in favor of the condenser. He said the applicant could otherwise put in multiple air conditioner units without any permit needed. He said the mini split system would benefit all the neighbors because it would be much quieter than several air conditioning units and would reduce over energy use.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

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

Mr. Mannle said it was a small request and noted that the applicant said he would take care of any problems with the neighbor. He said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance, would do substantial justice, and would not diminish the values of surrounding properties. He said literal enforcement of the ordinance would result in an unnecessary hardship. For those reasons, he said he would vote in approval. Mr. MacDonald concurred and said the project justified itself by having nothing wrong and everything good.

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

II. OTHER BUSINESS

Mr. Stith said a new member would soon be joining the Board as an alternate. He said the Legal Department requested a work session with the Board in a month or two, and he suggested starting the work session at 6 P.M. and having the regular meeting follow at 7:00 P.M.

III. ADJOURNMENT

The meeting was adjourned at 8:08 p.m.

Respectfully submitted,

Joann Breault
BOA Recording Secretary