

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

**7:00 P.M.**

**September 27, 2022**

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

**MEMBERS EXCUSED:** None.

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

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

**I. NEW BUSINESS**

- A.** The request of **Emily Morgan Revocable Trust of 2021 (Owner)**, for property located at **127 Willard Street** whereas relief is needed to replace the existing front porch with new covered landing with steps which requires the following: 1) A Variance from Section 10.521 to allow a 6 foot secondary front yard where 15 feet is required. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be expanded, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 149 Lot 37 and lies within the General Residence A (GRA) district. (LU-22-180)

**SPEAKING TO THE PETITION**

The applicant Emily Dow was present to review the petition and criteria. There were no questions from the Board. Chairman Parrott opened the public hearing.

**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 as presented, seconded Mr. Rossi.

Referring to Sections 10.233.21 and .22 of the ordinance, Mr. Mannle said granting the variances would not be contrary to the public interest because it was a small request. He said it would observe

the spirit of the ordinance because there was no difference in the existing or proposed. He said granting the variances according to Sections 10.233.23 and .24 would do substantial justice and would not diminish the values of surrounding properties because it would make the house better and therefore the surrounding properties better. Referring to Section 10.233.25, he said literal enforcement of the provisions of the ordinance would result in unnecessary hardship because the applicant has a corner lot. For those reasons, he said the variances should be granted. Mr. Rossi concurred and added that there were no public comments submitted in opposition, nor were there objections from the abutters, so those were supporting facts for requirements for not being contrary to the public interest and observing the spirit of the ordinance.

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

- B.** The request of **Anne R. Landau Bellaud (Owner)**, for property located at **55 Aldrich Road** whereas relief is needed to remove existing front steps and construct new deck and steps which requires the following: 1) A Variance from Section 10.521 to allow a 2.5 foot front yard where 15 feet is required. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be expanded, reconstructed, or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 153 Lot 44 and lies within the General Residence A (GRA) district. (LU-22-181)

### **SPEAKING TO THE PETITION**

The applicant Anne Landau Bellaud was present to review the petition and criteria. The Board had no questions. Chairman Parrott opened the public hearing.

### **SPEAKING TO, FOR, OR AGAINST THE PETITION**

No one spoke. Chairman Parrott closed the public hearing.

### **DECISION OF THE BOARD**

Ms. Eldridge moved to **grant** the variances as presented, seconded by Vice-Chair Lee.

Referring to Sections 10.233.21 and .22 of the ordinance, Ms. Eldridge said granting the variances would not be contrary to the public interest because the project would improve the building's safety and the look of the house and therefore would observe the spirit of the ordinance. She said substantial justice would be done according to Section 10.233.23 because the owner's benefit would not be outweighed by any harm to the public. Referring to Section 10.233.24, she said granting the variances would not diminish the values of surrounding properties because an improved entrance would increase them. Referring to the unnecessary hardship in Section 10.233.25, she said if the applicant wants to go out her front door, she can't help but be in the setback, and it was even further back from the setback than it was before. For those reasons, she said the variances should be granted. Vice-Chair Lee concurred and had nothing to add.

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

- C. The request of **Seth Monkiewicz (Applicant)**, and **Betty Ann Fraser (Owner)**, for property located at **42 Harvard Street** whereas relief is needed for the upward expansion of existing garage and mudroom to create an attached ADU which requires the following: 1) A Variance from Section 10.521 to allow a 22 foot front yard where 30 feet is required. 2) A Variance 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. Said property is located on Assessor Map 259 Lot 30 and lies within the Single Residence B (SRB) district. (LU-22-176)

### **SPEAKING TO THE PETITION**

The applicant Seth Monkiewicz was present to review the petition and criteria. He said they wanted an ADU so that a daughter could move in and take care of her aging mother.

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

### **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 variances as presented and advertised, seconded by Mr. Rossi.

Vice-Chair Lee referred to Sections 10.233.21 and .22 of the ordinance and said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance because the proposed use would not conflict with any explicit or implicit purposes of the ordinance, would not alter the essential character of the neighborhood, would not threaten the public's health, safety, or welfare or injure any public rights. Referring to Sections 10.233.23 and .24 of the ordinance, he said substantial justice would be done and the values of surrounding properties would not be diminished because the house would blend in. Referring to Section 10.233.25 and the special conditions of the property, he said if the ADU were built on grade, it would increase the lot coverage more than it existed now. For those reasons, he said the proposed use was a reasonable one and thought the variances should be granted. Mr. Rossi concurred and had nothing to add.

Mr. Stith noted that the lot area must be conforming when someone is seeking an ADU but that it wasn't advertised, so he asked that the Board add that as a condition or recognize that they were granting the lot area that is less than 15,000 square feet at 13,039 square feet. Vice-Chair Lee and Mr. Rossi concurred.

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

- D.** The request of **Brian and Charlene Huston (Owners)**, for property located at **44 Harding Road** whereas relief is needed to remove existing deck and construct new deck with stairs which requires the following: 1) A Variance from Section 10.521 to allow 25% building coverage where 20% is the maximum allowed. 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 250 Lot 75 and lies within the Single Residence B (SRB) district. (LU-22-178)

### **SPEAKING TO THE PETITION**

The owner Brian Huston was present to review the petition and criteria. The Board had no questions. Chairman Parrott opened the public hearing.

### **SPEAKING TO, FOR, OR AGAINST THE PETITION**

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

### **DECISION OF THE BOARD**

Mr. Stith said the proposed deck at 14 feet would encroach into the rear yard, so the applicant agreed to move it back two feet, making the deck 12 feet in depth which would lower the building coverage to 24-1/2 percent instead of the proposed 25-1/2 percent.

Mr. Ross moved to **grant** the variances as presented with the following **stipulation**:

1. The deck shall be 12 feet in depth and the allowed building coverage shall be 24.5 percent.

Vice-Chair Lee seconded.

Mr. Rossi said granting the variances would satisfy the requirements of Sections 10.233.21 and 22. He said the purpose of the ordinance would not be contravened by the deck because the additional space was a sort of wrap-around into the interior corner of the building and would not be visible from the front of the property. He said substantial justice would be done because it would have no impact on surrounding properties and there would be no loss to the public. He said granting the variances would not diminish the values of surrounding properties because the improvement would raise the value of the applicant's house as well as the adjacent ones. He said the small lot size was a factor in taking what is a reasonable modest deck and putting it slightly outside of the percentage building coverage specification of the ordinance, and that is a hardship that would prevent a reasonable use of the property.

Vice-Chair Lee concurred and had nothing to add. The motion **passed** by unanimous vote, 7-0.

- E.** The request of **Madison Tidwell & Brendan Barker (Owners)**, for property located at **38 Thaxter Road** whereas relief is needed to construct a 14' x 25' rear second story over an existing structure which requires the following: 1) A Variance from Section 10.521 to allow

a 23 foot rear yard where 30 feet is required. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be expanded, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 166 Lot 36 and lies within the Single Residence B (SRB) district. (LU-22-164)

### **SPEAKING TO THE PETITION**

The applicant Brendan Barker was present to review the petition. He said they needed the addition to accommodate his growing family. He reviewed the criteria and said they would be met.

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

### **SPEAKING TO, FOR, OR AGAINST THE PETITION**

The applicant said he had a letter of support from a neighbor and handed it to the Board.

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

### **DECISION OF THE BOARD**

Mr. Rossi moved to **grant** the variances as presented. Ms. Eldridge seconded.

Mr. Rossi referred to Sections 10.233.21 and .22 and said granting the variances would observe the spirit of the ordinance because the SRB district is meant to provide family dwellings and the applicant proposes to make use of the space to accommodate his family's needs. He said substantial justice would be done by raising the addition to the second floor because it would not encroach on any of the setbacks and would pose no loss to the public. He said granting the variances would not diminish the values of surrounding properties, referring to the abutter's letter of support. He said literal enforcement of the provisions of the ordinance would result in unnecessary hardship because expanding the footprint of the property in other ways would create problems in terms of encroachment and area usage, so it was the best way to accommodate the family's needs.

Ms. Eldridge concurred and had nothing to add. The motion **passed** by unanimous vote, 7-0.

- F. The request of ADL 325 Little Harbor Road Trust (Owner), for property located at 325 Little Harbor Road** whereas relief is needed to renovate an existing historic barn which requires the following: 1) A Variance from Section 10.628.30 to permit a bottom/basement finished floor elevation of 8 feet where 7.88 feet exist where 9 feet is required. Said property is located on Assessor Map 205 Lot 2 and lies within the Rural (R) district. (LU-21-220)

### **SPEAKING TO THE PETITION**

Attorney Tim Phoenix representing the applicant was present, with Arron Sturgis of Preservation Timberframe. Attorney Phoenix reviewed the petition, noting that they would meet FEMA's 8-ft

requirement for a floor elevation. He said raising the barn would be costly and put the timberframe structure at risk. He reviewed the criteria and said they would be met. Mr. Sturgis said the barn was on solid ledge and the foundation was in great shape. He said the City's regulation and FEMA's was a difference of a foot but meant that they would have to raise the barn more than a foot, which would be costly and risky. He said the barn had no issues for 150 years and there was no reason to change it, especially with a new seawall planned.

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

### **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 as presented and advertised, seconded by Vice-Chair Lee.

Ms. Margeson said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance, which met Sections .21 and .22. She said the City decided to be more protective with flood levels and raise it from 8 to 9, but the reality was that only 16 percent of the barn was in the flood zone, so she did not find that it violated the basic objective of the City's zoning ordinance. She said the essential character of the neighborhood, or in this case, island would not be altered, and there would be no threat to the public's health, safety or welfare from allowing a portion of the building to be below the City's flood level requirement. She said granting the variances would do substantial justice because there would be no benefit to the public that would outweigh the hardship to the applicant. She said the island has no abutters. She said granting the variances would not diminish the values of surrounding properties because the land is an island and has no surrounding properties. She said granting the variances would meet the criteria of literal enforcement of the provisions of the ordinance resulting in an unnecessary hardship because the property has special conditions that distinguish it from other properties in the area in that it's the only property in the area. She said a fair and substantial relationship does not exist between the general public purposes of the ordinance's provisions and the specific application of those provisions to the property. She said the City has decided to be more protective of flood zone levels, but only 16 percent of the barn is in the flood zone, so it has special conditions and meets that requirement. She said the proposed use is a reasonable one, it's in the Rural District and this is an appropriate accessory dwelling to the house within the Rural District, so the proposed use for the barn is reasonable. She said the additional variance requirements are also met because the variances granted will not result in increased flood heights, additional threats to the public's safety, or extraordinary public expense. She said the required variance is for activity within the designated regulatory floodway, and there would be no increase in flood levels during the base flood discharge from the barn in that flood zone that has been there since the barn has been there. She said the variance is the minimum necessary considering the flood hazard to afford relief and brings it up to eight feet, so it met that criteria as well.

Vice-Chair Lee concurred. He said he met with the construction superintendent, who showed him the barn. He said the barn had been there a long time and that it was exciting to see someone go to the expense and time to preserve the historic property.

Mr. Stith said there was a section in the ordinance stating that the Board will notify the applicant that the required elevation might result in increased premium rates for flood insurance up to amounts of \$25 per \$100 of coverage, and that such construction below the required elevation increases risk to life and property. He said those two items would be added to the Letter of Decision.

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

- G.** The request of **John T. & Mary R. McDonald (Owners)**, for property located at **74 Sunset Road** whereas relief is needed to add a front porch, front dormer and connection to garage which requires the following: 1) Variances from Section 10.521 to allow a) a 16 foot front yard where 30' is required; and b) 26.5% building coverage where 20% is required. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be expanded, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 153 Lot 14 and lies within the Single Residence B (SRB) district. (LU-22-182)

## **SPEAKING TO THE PETITION**

Attorney Tim Phoenix was present on behalf of the applicant and reviewed the petition and criteria

Mr. Rossi said the applicant must establish that the property is burdened by the zoning restriction in a manner that is distinct from other similarly situated properties. He said the surrounding properties seemed almost identical in terms of size and setback. Attorney Phoenix said not all of the houses were identical, even though the ones across the street seemed to have similar setbacks. He said there were other lots in the area that were larger and had larger homes on them that appeared to meet the setbacks and probably met coverage. He cited a Manchester, NH case that stated that if an applicant was doing something that's already been done in that area, it was a form of hardship that allowed the applicant to proceed with getting their variances granted.

Chairman Parrott opened the public hearing.

## **SPEAKING TO, FOR, OR AGAINST THE PETITION**

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

## **DECISION OF THE BOARD**

Vice-Chair Lee said he went through the house when it was for sale and that it was a nice house in a nice neighborhood but was burdened by an awkward floor plan. He said the proposed improvements made sense and would make the house more livable and enhance the values of the neighborhood.

Vice-Chair Lee moved to **grant** the variances as presented and advertised, seconded by Ms. Margeson.

Vice-Chair Lee referred to Sections 10.233.21 and .22 of the ordinance and said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance because the proposed use would not be in conflict with the explicit or implicit purposes of the ordinance and would not alter the essential character of the neighborhood nor threaten the public's health, safety, or welfare or injure any public rights. He said substantial justice would be done because the benefit to the applicant would not be outweighed by the general public or other individuals, which satisfied Section 10.233.23. He said the addition and renovation of the property will add to the value of the surrounding properties, satisfying Section 10.233.24. Referring to Section 10.233.25, literal enforcement of the ordinance would result in an unnecessary hardship, he said the property is somewhat burdened by a zoning restriction that makes it distinct from other similarly situated properties, and because of those special conditions, a restriction is applied to the property that doesn't serve that purpose in a fair and substantial way. He said the proposed use is reasonable and doesn't alter the essential character of the neighborhood, so it satisfies the hardship criteria. For those reasons, he moved to grant the variances.

Ms. Margeson concurred. She said she had had the same question that Mr. Rossi had, and she did find that Walker vs. the City of Manchester applied because there were existing nonconformities in the area which constituted a special condition.

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

**H.** The request of **Neila LLC (Owner)**, for property located at **324 Maplewood Avenue** whereas relief is needed to convert the existing garage into a dwelling unit which requires the following: 1) Variances from Section 10.5A41.10A to allow a) a lot area per dwelling unit of 1,780 square feet where 3,000 square feet is required; and b) a 1 foot side yard where 5 feet is required. 2) A Variance from Section 10.1114.21 to allow an 8.5 foot wide by 18 foot long parking space where 8.5 feet by 19 feet is required. Said property is located on Assessor Map 141 Lot 1 and lies within the Character District 4-L2 (CD4-L2) and the Historic district. (LU-22-183)

## **SPEAKING TO THE PETITION**

Attorney Monica Kaiser was present on behalf of the applicant, along with LLC Principle Nicole Abshier. She said Ms. Abshier lived next to the property and that the applicant had support from several abutters. Attorney Kaiser said the garage petition was before the Board twice in 2009 and both times Ms. Abshier opposed any upward expansion. She reviewed the tax map and the petition and said they were not proposing any physical changes to the site and that the garage would stay the same but the interior parking space was a half foot shorter than required. She asked if there were questions pertaining to Fisher v. Dover. Ms. Margeson said she didn't think it applied but said it seemed that the building was going up one story. Attorney Kaiser said that photo was from the proposal that was denied and that they were just making the garage nicer and renovating the inside. She said the zoning had changed and the variance request was a lot less. She reviewed the criteria.



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

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

Walter Hoerman of 56 Dennett Street said the proposal was the one out of a few over the years that would have the least impact on the neighborhood. He said allowing the building to be a dwelling unit would fit more into the neighborhood than the present commercial use.

### **SPEAKING IN OPPOSITION TO THE PETITION**

No one spoke.

### **SPEAKING TO, FOR, OR AGAINST THE PETITION**

George Dempsey of 42 Dennett Street said his neighbor had invested a lot of time and money into the property and that it was an outstanding project that would match the neighborhood.

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

### **DECISION OF THE BOARD**

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

Mr. Rossi referred to Sections 10.233.21 and .22 and said the spirit of the ordinance in this zone was to create spaces that are walkable, mixed use, and of human scale, and since there is no change in the scale of the building, he said this proposal does not in any way diminish the walkability or human scale of the neighborhood. He said granting the variances would do substantial justice, noting that the Board heard from the abutters that they perceived no loss to themselves, and he agreed that there would be no loss to the public that would outweigh the benefit to the applicant but in fact would be a gain to the public by increasing the housing stock. He said the Board could be assured by the abutters' statements that granting the variances would not diminish the values of surrounding properties. He said literal enforcement of the ordinance would result in an unnecessary hardship because the lot was very oddly shaped and it was difficult to apply the setbacks. With regard to the garage dimensions, he said 18 feet was adequate to fit a large sedan and he saw no purpose in creating a hardship around the garage because the ordinance does not really provide any benefit by complying. Mr. Mannle concurred and had nothing to add.

Ms. Margeson said the lot area is a significant change because it would be halved from a minimum of 3,000 square feet to 1,780 square feet, but there was already a structure on that lot, and except for the right yard setback which is not becoming any more conforming, all the other setbacks are met.

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

Mr. MacDonald recused himself from the following petition.

- I. The request of **Jeffrey & Melissa Foy (Owners)**, for property located at **67 Ridges Court** whereas relief is needed for the expansion of existing main roof and front porch roof and addition of new roof over side doorway which requires the following: 1) Variances from Section 10.521 to allow a) an 8 foot front yard where 30 feet is required to expand the existing front porch; b) a 13.5 foot front yard where 30 is required to expand the main roof of the house; c) a 13.5 foot front yard where 30 feet is required for a new roof over an existing doorway; and d) a 9.5 foot left side yard where 10 feet is required for a new roof over an existing doorway. 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 207 Lot 59 and lies within the Single Residence B (SRB) district. (LU-22-139)

### **SPEAKING TO THE PETITION**

Attorney Tim Phoenix was present on behalf of the applicant. He noted that they were before the Board the previous month and were denied but would return with a modified proposal for an addition. He said it was discovered after submitting the application that the setback requirement for the house wasn't 30 feet because the provision in the ordinance said if there were homes next to the applicants within 200 feet that were less than the required, then the applicant could go to the average. He said the real setback was 19 feet, so they didn't need the relief to raise the roof and therefore were before the Board only for the front entry. He said it would be slightly expanded and have a small eyebrow roof over the side door. He review the criteria. He said the neighbor at 46 Ridges Court was the only one affected, and the neighbor at 49 Ridges Court would be the only neighbor who would see the eyebrow window but supported it.

Ms. Margeson said it was a bit confusing, noting that Attorney Phoenix said they were variance requests that he meant to include in the application the previous month. Attorney Phoenix said the features were on the proposed plans and weren't significant enough to be noticed, but he didn't ask for them. He said the only request at that time was the addition that was denied.

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

### **SPEAKING TO, FOR, OR AGAINST THE PETITION**

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

### **DECISION OF THE BOARD**

Ms. Eldridge moved to **grant** the variances as presented, seconded by Vice-Chair Lee.

Ms. Eldridge said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance because the changes being made to the house are minor and won't affect anyone. She said substantial justice would be done because no one would be harmed by the change and the owner will benefit by being kept out of the weather and having the aesthetic

changes they wanted. She said granting the variances would not diminish the values of surrounding properties and literal enforcement of the ordinance would result in unnecessary hardship for the owner. She said the variances asked for were very minor and very much like what existed at the house now, and the owner couldn't get a covering roof over the door without some infringement on the property. For those reasons, she said the variances should be granted. Vice-Chair Lee concurred.

Ms. Margeson that these are for front yard and left yard setbacks, and the left yard setback is a de-minimis change because it's basically rounding out, but the primary front yard setback is less significant given the front yard averaging under the zoning ordinance. She said the setback requirements are about overcrowding the property, movement of light and air, stormwater issues, etc., so she didn't believe that there is any violation of the spirit and intent of the ordinance with the variance application.

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

## **II. OTHER BUSINESS**

There was no other business.

## **III. ADJOURNMENT**

The meeting was adjourned at 9:00 p.m.

Respectfully submitted,

Joann Breault  
BOA Recording Secretary