

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

7:00 P.M.

July 19, 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

I. APPROVAL OF MINUTES

A) Approval of the minutes of the meetings of June 22, 2022.

*The June 22 minutes were **approved** as submitted by unanimous vote, 7-0.*

II. OLD BUSINESS

A. 470 Lincoln Avenue – 1 year Extension Request

*Mr. Mannle moved to **grant** the extension, seconded by Ms. Eldridge.*

Mr. Mannle said the board routinely granted one-year extensions and he saw no reason why they shouldn't grant this one. Ms. Eldridge concurred and had nothing to add.

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

At this point in the meeting, Chairman Parrott asked that postponed petitions Petition E, 108 Burkitt Street, and Petition M, 67 Ridges Court, be taken out of order and voted upon.

*Mr. Mannle moved to **postpone** Petition E, 108 Burkitt Street, seconded by Vice-Chair Lee.*

Mr. Mannle said he saw no reason not to grant it. *The motion **passed** by unanimous vote, 7-0.*

*Ms. Margeson moved to **postpone** Petition M, 67 Ridges Court, to the August 16 meeting, as requested by the applicant. Mr. Rossi seconded.*

Ms. Margeson and Mr. Rossi said they had nothing to add. *The motion **passed** by unanimous vote, 7-0.*

B. 225 Banfield Road – Rehearing Request (LU-22-91)

*Ms. Margeson moved to **grant** the rehearing request, seconded by Mr. Mannle.*

Ms. Margeson said the abutter Pike Industries submitted a motion for rehearing that was very comprehensive and pointed out the ways in which the board erred in granting the variance application. As was demonstrated by the applicant's attorney at the hearing, she said there really was no hardship with respect to the property and she would therefore move to rehear it to fix the board's error. Mr. Mannle concurred. He said he didn't see how not having a rehearing would benefit anyone. He said he'd rather the board rehear it and get it right no matter how many times they had to deliberate on it. Mr. Rossi said he planned on approving the request because he felt confident that the board had enough information to vote on. Ms. Eldridge said the board's previous vote had been a very difficult decision and that she was also in favor of rehearing it.

*The motion **passed** by a vote of 5-2, with Chairman Parrott and Vice-Chair Lee voting in opposition.*

Chairman Parrott said the rehearing would be scheduled for the August 16 meeting.

- C. 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 40' is the maximum allowed. Said property is shown on Assessor Map 117 Lot 14 and lies within Character District 4 (CD-4), Character District 5 (CD-5) and the Historic District. (LU-22-12)

SPEAKING TO THE PETITION

Attorney F. X. Bruton was present on behalf of the applicant. He said if they received a variance, then they would ask that the appeal be stayed or continued. Ms. Margeson said if the administrative appeal was overturned, the applicant wouldn't need to ask for a variance. Attorney Bruton said they wanted to get the board's position on the variance as well. Mr. Mannle said the applicant indicated that the city staff said what was asked for was consistent for the area, even though it was against zoning. Attorney Bruton said the board would understand what he meant if they listened to his presentation. Ms. Margeson said the administrative appeal should be heard first and that it was up to the board to decide and not the city staff.

*Ms. Margeson moved to **hear** the administrative appeal first, seconded by Vice-Chair Lee. The motion **passed** by unanimous vote, 7-0.*

NOTE: At this point in the meeting, the board addressed Item D, The request of **Francis X. Bruton, (Attorney for Appellants)**, for Appeal of Administrative decision for 1 Congress Street. See page 5.

After hearing the appeal, the board addressed the petition.

SPEAKING TO THE PETITION

Attorney Bruton said they originally requested two variances but then revised the project after meeting with the HDC, Planning Board, and city staff and went from 44 feet and 11 inches to 42 feet and 9-1/2 inches for the height. He said they didn't need a fourth story because they had a hip mansard roof with dormers. He said the building was unique because it had a parking lot in the back located near a parking garage and was also in an area where the buildings were tall. He said they wanted to create a uniform building and extend it down to High Street, and they would need elevators and stair access on levels that were consistent to meet ADA requirements. He said they believed that the massing fit within the area. He said the green zone limited the height to 40 feet but a lot of the building was in the orange zone, which permitted more than they were requesting in terms of the entire building. He noted that there was a pending zoning ordinance change to permit that portion of High Street to be raised to 45 feet, and if the variance were granted, then the project would be locked into 42'9" as opposed to that zoning change. He reviewed the criteria and said they would be met. The commercial and residential appraiser Brian White addressed the diminution of property values criteria. He said he considered all the changes in noise, view, and use that would impact surrounding properties and explained why there would be no diminution of surrounding property values.

Mr. Mannle asked what the square footage of the building in the CD4 district would be. The project engineer John Chagnon explained how it would result in 7,400 square feet per floor. Ms. Margeson said the visual depictions were conditions upon which to grant the variance or not. She said it would not be all one floor because of the little building in the middle of the complex. Project architect Tracy Kozak said that building was the opera house that was the crown jewel of the project, so the building was set back behind it. She said they were redoing the interior floors behind that building so that the entire building would be handicap-accessible on each level. Ms. Margeson said the building was massive and was surprised that the HDC was in support. Ms. Kozak said they had made significant revisions based on the HDC's feedback and were confident that the building was subservient to its surroundings per the Secretary of Standards of Historic Buildings. She noted that the previous Dolphin Hotel was larger, and she said the proposed building was smaller than a lot of buildings around it.

Chairman Parrott opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

No one spoke.

SPEAKING IN OPPOSITION TO THE PETITION

Esther Kennedy of 41 Pickering Avenue said she didn't see any hardship, and she worried about putting a building of that magnitude in that location and its effect on the smaller shops around it. She said it was up to the board to make sure that whatever went in there didn't detract from the

historical nature of the area and the downtown. She said the building overshadowed the buildings around it as well as some of the historic buildings. She asked that the variance not be granted.

Elizabeth Bratter of 159 McDonough Street said the hotel that was there before was only three stories and there was a mechanic shop around the corner that was two stories, so there wasn't much of a building. She said the mansard roof would count as a fourth story. She also noted that a lot of people who attended the Planning Board meeting were in opposition to Haven Court being changed and that it had been taken off the table.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Petra Huda of 280 South Street said the applicant was relying on the proposed zoning requirements and on the HDC's approval. She said the building didn't belong in the District at the height they were requesting.

Attorney Bruton said they were before the board to get ADA compliance. He said the HDC asked them to push the elevator to the back of the building and they were trying to present things like the opera house and also make the building safe. He said some of the comments didn't relate to what they were asking for, like the height. He said the board should look at the variance request and what the applicant was doing in conjunction with what the HDC asked them to do. He said he was hopeful that the board would consider the changes as *de minimis* as possible. He emphasized that they brought the height down and were below the heights in the area.

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

DISCUSSION OF THE BOARD

Vice-Chair Lee said he would not support the variance request because it failed on several criteria, and he read a letter from a neighbor who was opposed to the project. Ms. Margeson said she also would not support it because she felt that the applicant had not demonstrated hardship for going up further than what was allowed by zoning, and it failed the spirit and intent of the ordinance. She said City Planner Nick Cracknell was correct when he wrote his letter about protecting the streetscape. She said the zoning map was clear that it meant for lower building heights along that edge. She said the fact that the building was in the Historic District was an extra purpose that the board needed to consider when it entertained a variance, and she didn't think it protected the District. She said the opera house seemed squeezed in.

Ms. Eldridge said she didn't understand all the animosity toward the building because it was about a five percent difference and the mansard roof was the kind of roof wanted in Portsmouth instead of a flat roof. She said she didn't see how it affected the streetscape because there was nothing there. She thought the HDC did a good job because the building was full of windows and light, even though it was a large structure. She said she did have trouble seeing the hardship, however. Mr. Rossi said he liked the design but didn't like the references to pending changes in zoning. He thought it was important for the board to acknowledge that there was a fairly substantial amount of public animosity toward the project. He said if the City Council wanted to

change the zoning they could, but he would not support the variance request in the meantime. Mr. Mannle said he wouldn't support it because the lots were merged to benefit from the CD5 height as opposed to CD4.2. He said the elevator space was in the CD5 district, which was 45 feet, so the variance for the elevator wasn't needed. He said the board had to look at what was presented to them, and he thought 2'9" x 7,400 square feet totaling 19,000 square feet was a huge ask. Mr. Rossi said that, considering how many times the discussion had been postponed and delayed, it was difficult for the board to absorb a new staff report that came in hours before a complicated matter like this and it was hard to follow what the actual proposal was and what the height was. He said it was a process issue that should be considered in the future.

DECISION OF THE BOARD

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

Mr. Mannle said granting the variance would be contrary to the public interest and would not observe the spirit of the ordinance, nor do substantial justice. He said granting the variance could diminish surrounding property values. He said there was no hardship and the zoning had been there for eight years. He said a variance wasn't needed for the elevator access and there was already a 45-height limit. For those reasons, he moved to deny the variance request. Mr. Rossi concurred and had nothing to add.

Chairman Parrott said he would not support the motion. He said he stood in the back corner by the garage and looked at the mishmash of odd buildings, add-ons, rooflines, and so on and thought it was homely. He said the building would be a substantial improvement and that the reduction in height to a very small number of 2-1/2 feet plus was a reasonable request.

*The petition **passed** by a vote of 6-1, with Chairman Parrott voting in opposition.*

- D.** The request of **Francis X. Bruton, (Attorney for Appellants)**, for Appeal of Administrative decision that the merged lot at **1 Congress** is not subject to the height allowances (2 stories, 4th short, 45 feet in height) pursuant to Map 10.5A21B and as permitted pursuant to Section 10.5A21.22(a) & (c) of the Zoning Ordinance. Said property is shown on Assessor Map 117 Lot 14 and lies within Character District 4 (CD-4), Character District 5 (CD-5) and the Historic District. (LU-22-12)

SPEAKING TO THE APPEAL

Attorney F. X. Bruton as present on behalf of the applicant. He said the project involved the renovation and construction on portions of the property. He said prior to submitting their appeal, the parcel was two parcels but was now merged. He said the project went through a lot of work with the HDC and also had a conceptual plan review with the Planning Board. He said changes were made to the project as a result of input from the HDC, city staff, Planning Board and the design team, and the variance had been reduced in size to a request for 2 feet and 9 inches. He said the back portion of the lot was in the CD4 zone and was the only lot in it, which was unique. He noted that the ordinance used colors on a map to define numbers of stories and the height of a

building. He said the front lot had an orange color, which allowed the building height to be 45 feet, and the back parcel was green, which allowed a 40-ft high building. He said in their case, the building was 42 feet and 9-1/2 inches. He said the entire building was 42 feet and that the orange color also encompassed their building and allowed for 45 feet. He said the ordinance also talked about lots that had two different colors associated with them and that the city interpreted the clause to mean that the front portion could be 45 feet, and then based on other provisions, if someone was within 50 feet from the lot line or the street, they could be whatever the color is, but 50 feet beyond that, they would have to comply with the front lot line or street. He said the front lot line definition said that the building height allowance was wherever the address was. He said One Congress Street was the address and was in the orange section, which would allow them 45 feet all the way back down High Street. He said the city staff said they could only have the orange go into the green in an area that's not within 50 feet of the street, so there was an odd interpretation because in the back portion of the lot, one was allowed to have a chunk of orange but the rest had to be green. He said it didn't make sense in terms of building to building, and it was also inconsistent with the ordinance because the ordinance stated that one could measure from a front line or a street. He said they were measuring from the front line all the way back, and if the ordinance said 'and' a street, they would have to bifurcate. He said the city was going through a rezoning process to change that language because of his client's argument, and he further explained it. He said they're only going to 42 feet and 9-1/2 inches, which was within the 45 feet allowed, and that was the reason he believed that a variance was not required.

Ms. Margeson asked whether the interpretation didn't lie on what Haven Court was, saying the city thought it was a street. Attorney Bruton said the plan was commissioned by the city a number of years ago because the city was going to purchase a small portion of the Haven Court area associated with the J. J. Newbury building. He said the surveyor indicated that it was a private way, and his client had title to that area as well. He said the only question was whether it was a street or not. He said their project engineer Mr. Chagnon did the same survey and came to that conclusion. He said that plan was presented to the Planning Board and signed off as being a private way, but it didn't matter because even if it was a street, they could still measure from the front lot line. He said there was nothing to suggest to him that it was a public street. He said the ordinance defines it as a street as laid out or as depicted on a subdivision plan.

Mr. Rossi said it did matter because there were two separate arguments the applicant was making, and he found himself in agreement about Haven Court. He said he read the ordinance as an inclusive 'or', not an exclusive 'or'. He said it was the standard legal way of reading that text, and he didn't think it was standard to read it as an exclusive 'or', nor did it make sense in the context of the ordinance the way it was written to read it as an inclusive 'or'. He said both of those things had to be considered separately. He said if the board agreed that it was an exclusive 'or', it might have implications throughout the ordinance where the word 'or' is used and one was forced to look at it as always exclusive, which he didn't think it was in this case. Attorney Bruton said their argument was that it's an independent coordinating conjunction. Mr. Rossi said he still understood it as an inclusive 'or'.

Returning to the street argument, Ms. Margeson said the client owned Haven Court *in fee* and it had an access easement for the property next to it. Attorney Bruton said that was another reason

why one would expect it to be a private way. He said if it were a public street, J. J. Newbury wouldn't need the easement. Ms. Margeson said an accessway as defined in the ordinance was a privately owned roadway. Attorney Bruton said the public street definition was limited to what is shown on a subdivision plan approved by the Planning Board or as laid out and accepted by the City Council. Ms. Margeson said the definition of 'street' says thoroughfare or roadway, and an accessway is a private roadway. Attorney Bruton said the provision he referred to only referred to a street, and that street had a specific definition. He said it wasn't a road *per se* because the area dropped off. He said it wasn't defined on the plan as a street but was more of a parcel of land, and there was no interest in terms of liability from the abutter, so the city took it over but did a subdivision for it and the private way designation was applied. Mr. Mannle asked why the two lots were merged. Attorney Bruton said it was to construct the building and remodel what exists in a historic way and keep things in the front. Mr. Mannle said that could have been done without merging the lots. Attorney Bruton said typically the lots would be merged to have one lot and one building, and if the lots were crossed, there would be setback issues.

Ms. Margeson said the map indicated that the back of Lot 15 has the lower building height, and all the surrounding properties have lower building heights. Attorney Bruton said everything around them was generally higher and the building's massing completely fit within the area. He said it was favorably received by the HDC, which was why it was able to be brought down to the bare minimum of what was needed for ADA purposes. He said they were trying to max it out and were dealing with a unique situation of two zones and two height colors. Ms. Margeson said other lots along Market Square had the same issue, orange in the front and green in the back, and the city was deliberate in making sure that the ones off Market Square were green. It was further discussed. Attorney Bruton said Portsmouth had a list of public roads, and Haven Court wasn't included on it. Chairman Parrott noted that Haven Court had been used as a public way for decades. Attorney Bruton said they wanted to enliven that area and encourage that use and that the overall use would be spectacular and open to the public.

Mr. Rossi said it was clear on the appeal that if the board interpreted 'or' as being exclusive, then the Haven Court question wasn't relevant because the city staff's interpretation was that you have to have the 50-ft setback, but if it was inclusive, then the Haven Court question became important. It was further discussed. Ms. Margeson said she didn't look at it so narrowly as just 'or' but looked at it in terms of the zoning, map. She said if a city maintained a street, it was a public street. She thought it needed a variance and thought it was clear that the building was supposed to be a shorter height based on the zoning map. Attorney Bruton said public maintenance and use had to occur 20 years prior to 1968, and they didn't have evidence of that.

Chairman Parrott said the term 'street' in common use is that it's a generic term because there were streets, roads, byways, circles, alleys and so on, which some people called streets, but the word 'street' was a very generic term and didn't even mean a public or private street. Mr. Stith said the city's position was that Haven Court was a public street, and even if it wasn't, there would still be the 50-ft setback from High Street that would come to the gray box on the map.

Chairman Parrott opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Elizabeth Bratter of 159 McDonough Street said the change would not get rid of the word ‘street’ but would just define it to include private ways and small roads. She said the street list was old and that most people referred to the MapGEO platform for zoning heights and street names, and that included Haven Court. She said she supported the applicant’s need for a variance and noted that other buildings would be built in that area that also had extreme zones on their property.

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

DECISION OF THE BOARD

*Mr. Rossi moved to **deny** the appeal of the city staff’s judgement, seconded by Mr. MacDonald.*

Mr. Rossi said he wasn’t in agreement after hearing the full discussion of the applicant’s position on Haven Court for two reasons, 1) he thought it was a street, and 2) the wording of the ordinance in the context and reading it as an exclusive ‘or’ wasn’t the right precedent for the board to endorse. For those reasons, he said he would not support the appeal.

Mr. MacDonald said his conclusion was that the project intended to go ahead and do something that the ordinance was trying to restrict. He said it wasn’t part of what he knew was the direction that the city was going in the new century. He said there were a lot of verbal gymnastics one could go through to justify things that aren’t consistent with the ordinance’s objectives and that the board should just say no.

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

Note: The board then went back to Item C, One Market Square LLC (see page 2).

E. REQUEST TO POSTPONE The request of **Joel St. Jean and Mariele Chambers (Owners)**, for property located at **108 Burkitt Street** whereas relief is needed to demolish existing garage and construct new 13' x 30' garage which requires the following: 1) A Variance from Section 10.573.20 to allow a 1 foot left side yard where 10 feet 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 159 Lot 30 and lies within the General Residence A (GRA) District. (LU-22-89) **REQUEST TO POSTPONE**

DECISION OF THE BOARD

The petition was postponed.

- F.** The request of **James William Woods** and **Anna Roeline Meinardi (Owners)**, for property located at **1 Walton Alley** whereas relief is needed to construct a 1 story, 12' x 18' detached garage which requires the following: 1) Variances from Section 10.573.20 to allow a) a 1.5' side yard where 10' is required; and b) a 5' rear yard where 13'10" is required. Said property is located on Assessor Map 103 Lot 27 and lies within the General Residence B (GRB) and Historic Districts. (LU-22-124)

SPEAKING TO THE PETITION

Attorney Tim Phoenix was present on behalf of the applicants, along with project engineer John Chagnon and project architect Mark Gianniny. Attorney Phoenix reviewed the site plan and said they wanted to build a garage to the rear of the lot. He noted that it was moved to 9 feet from the front, not 5 feet, and that the garage's location drove the request for relief because there was no other practical space to put it. He said the renderings of the garage didn't exactly represent what would be on the ground because they didn't address the grade change. He said there was also an addition to the rear and the owner would add a conservation restriction. He said the entire house and grounds would be renovated. He noted that there were numerous garages in the south end. He reviewed the criteria and cited case law pertaining to hardship. He said a letter of support was received from the Coleman family, who lived behind the property.

Ms. Margeson said the garage could have gone in front of the house on Gates Street without zoning relief. Attorney Phoenix said if the garage were placed in front of the house, the setbacks could be met but the ordinance stated that there could not be an accessory unit between the house and the street. He said it also didn't make sense to put a building in front of the house, and it couldn't be put in the back because it would take away the backyard. Ms. Margeson concluded that any other place in the back would require a variance. Attorney Phoenix agreed. He said it was close to the side lot line but it couldn't be slid over anymore because the side of the house would interfere with the garage door.

Mr. Mannle asked if the garage could be slid to where the addition was. Attorney Phoenix said it wouldn't meet the 25-ft setback requirement and would interfere with access to the backyard. Mr. Mannle said if it was moved another four feet, it wouldn't require a variance. Mr. Stith said only 10'2" were needed. Mr. Chagnon said it would eliminate the driveway runoff to get to the backyard. Mr. Mannle asked if it could be put in the front at the top of the ell. Attorney Phoenix said they would require other variances because there couldn't be a subservient structure between the main house and the street, which he further explained.

Chairman Parrott opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

No one spoke.

SPEAKING IN OPPOSITION TO THE PETITION

David Adams of 210 Gates Street said he was a direct abutter. He said building anything on the front of the house would be a non-starter, but the backyard was tiny. He said the project was important for modernizing the house but the garage in the back lot would be a tight squeeze. He said he wasn't concerned about it ruining his property values but what bothered him more was that Katie Miller was on the other side of the house and even closer to the garage. He said she was against the project, but he was kind of on the fence.

Katie Miller (no address given) called in via Zoom and said she sent a letter to the board explaining why the garage would be a hardship for her. She said the area was her only green space and she would be looking out her back window and seeing an 18-ft long garage instead of trees and birds, and the garage would add to the denseness of the community. She said the garage wasn't a hardship and wasn't needed, and it would be a tight squeeze.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Attorney Phoenix said he wasn't aware of Ms. Miller's letter until now. He said she wasn't a direct abutter because she lived two lots over. He said she would see the roof but most of what she saw right now was a fence that would be replaced and there would be heavy landscaping behind the building. He said the whole south end was a tight area and garages were tucked into back areas of numerous lots. He said the rights of the property owner with respect to views had to be balanced against the rights of a neighbor who wasn't an abutter, and it was reasonable in an ell-shaped lot to have a garage. He said it was a necessary part of the project.

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

DECISION OF THE BOARD

*Mr. Rossi moved to **grant** the variance as presented, seconded by Vice-Chair Lee.*

Mr. Rossi said granting the variance would not be contrary to the public interest because the house would be significantly improved. He said it would observe the spirit of the ordinance because the alternative location for the garage in the other part of the ell-shaped lot would be a detriment to the area because it would obscure the view of a historic property. He said substantial justice would be done, noting that he didn't see any harm to the surrounding area that would outweigh the benefit to the homeowner. He said there was no evidence to suggest that granting the variance would diminish the values of surrounding properties. He felt that the project met the hardship test because the property had special conditions, including being a larger property than others in that area that could support the additional structure with no problem, but it was hard to find an area to put it in that didn't require a variance due to its shape.

Mr. Stith asked if the makers of the motion would agree to a stipulation that the rear yard shall be nine feet and that the final design may change as a result of the HDC's approval. They agreed.

The motion was **amended** as follows:

*Mr. Rossi moved to **grant** the variance as presented, seconded by Vice-Chair Lee, with the following **stipulations**:*

- 1. The rear yard shall be nine feet, and*
- 2. The final design may change as a result of the HDC's approval.*

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

III. NEW BUSINESS

G. The request of **Jay Anthony Clark (Owner)**, for property located at **64 Haven Road** whereas relief is needed to demolish existing garage and porch and construct new garage and addition which requires the following: 1) Variance from Section 10.521 to allow a 5' left side yard where 10' is required. 2) A Variance from Section 10.515.14 to allow a 7.5' setback for 2 mechanical units where 10' is required for each. 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 206 Lot 30 and is located within the Single Residence B (SRB) District. (LU-22-121)

SPEAKING TO THE PETITION

Project designer Brendan McNamara representing the applicant was present. He said the neighborhood was also consistently nonconforming and that the house had a nonconforming left side enclosed porch as well. He said they would maintain the core of the house but wanted to replace the existing garage and addition with a new addition that would allow more volume on the second floor. He noted that the mechanical units actually needed a 4.5 ft. setback and not a 7.5 ft. setback as advertised. He reviewed the criteria and said they would met. He said the left side neighbor who was the most impacted was in favor.

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 by Vice-Chair Lee.*

Mr. Mannle said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance; substantial justice would be done and the values of surrounding properties would not be diminished. He said literal enforcement of the ordinance would result in an unnecessary hardship because the applicant was asking for variances for the side and rear yards, and given that nearly every house in Portsmouth was nonconforming, granting the variances would make the house less nonconforming. Vice-Chair Lee concurred.

Mr. Stith said a stipulation was needed for the two air conditioning units that were 4-1/2 feet from the left side instead of the advertised 7-12 feet. Mr. Mannle and Vice-Chair Lee agreed.

The **amended** motion was as follows:

*Mr. Mannle moved to **grant** the variances as presented, seconded by Vice-Chair Lee, with the following **stipulation**:*

- 1. The two air conditioning units shall be 4-1/2 feet from the left side instead of 7-1/2 feet.*

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

H. The request of **Stephen E. Chaloner (Owner)**, for property located at **217 Myrtle Avenue** whereas relief is needed to construct a 6' x 8' deck with stairs which requires the following: 1) A Variance from Section 10.521 to allow a 12' secondary front yard where 30' 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 220 Lot 92 and is located within the Single Residence B (SRB) District. (LU-22-115)

SPEAKING TO THE PETITION

The applicant Stephen Chaloner stated that he wanted to build a small deck off the back of the house. He said the deck would nest into the house's current footprint and would not be visible to the abutter, and the trees on the property line would also shield it. He noted that there was a city culvert along Emery Street that took up over 20 feet of land, so visually the deck would adhere to the 30-ft setback. He reviewed the criteria and said they would be met.

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 by Ms. Eldridge.*

Mr. Mannle said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance, and the values of surrounding properties would not be diminished. He said literal enforcement of the ordinance would result in unnecessary hardship, noting that the applicant needed the variances from the secondary front yard because it was on a corner, and on the other side of the property line was another 20 feet of grassy area. He said it was a very small request and should be granted. Ms. Eldridge concurred and had nothing to add.

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

- I. The request of Emily Alati (Owner), for property located at 47 Lovell Street whereas relief is needed to construct a rear addition and detached garage with apartment which requires the following: 1) Variances from Section 10.521 to allow a) a 5' right side yard where 10' is required; b) a 5' rear yard where 20' is required; c) a 6.5' left side yard where 10' is required; d) a lot area per dwelling unit of 2,178 where 3,500 per dwelling is required; and e) a 6' right 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 located on Assessor Map 146 Lot 14 and is located within the General Residence C (GRC) District. (LU-22-120)

SPEAKING TO THE PETITION

The applicant Emily Alati was present. She said she currently lived at 653 Greenland Road but was downsizing to the Lovell property. She said she met with the abutters, one of whom she shared a deeded driveway with, and they were both in favor of the project. She said she wanted to fully renovate the house and add a detached garage with an apartment above it in which her mother would live. She said the lot was long and narrow, so the detached living space would be at the far back of the lot so that cars could pull in and out of the driveway. She reviewed the criteria and said they would be met.

Ms. Margeson asked how someone would get to the garage. Ms. Alati said the driveway was to the right of the house, and with a minimum of 20 feet, she could pull in and out. Chairman Parrott asked what the distance would be between the back of the house after it was renovated and the front of the garage, and Ms. Alati said it would be 25-39 feet.

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 said he was familiar with the property and agreed that there wasn't a lot of room in the driveway. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said the proposed use would not conflict with the implicit and explicit purposes of the ordinance nor alter the essential character of the neighborhood. He said substantial justice would be done because the benefit to the applicant

would not be outweighed by any harm to the general public. He said he could testify as a real estate broker that the addition of the garage wouldn't diminish the values of surrounding properties and in fact would enhance them. He said the house was in poor condition and any improvements to it would be an asset. He said the hardship was that literal enforcement of the ordinance would prevent the applicant from having the setback variances and being able to put the new garage in and have the extra dwelling with the lot area per dwelling. He said those were special conditions of the property, and for those reasons, he said the variances should be granted.

Mr. Rossi concurred. Referring to substantial justice, he said the use of the property as proposed would prove a great benefit to family situation that had some complexity to it, with the need for care for a parent and other factors. He said he was happy that the board was able to grant the variances to accommodate the needs of someone would try to make things work in Portsmouth

Ms. Margeson said she struggled with the petition a bit until the presentation. She said the property didn't have special conditions in that it was much like the properties next to it, except that it couldn't be reasonably used in strict conformance with the ordinance. She said it was in the GRC District, which allowed for more than one dwelling, it was an allowed use, and a garage was a permitted accessory use in a residential area.

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

*At this point in the meeting, Mr. Mannle moved to go beyond the 10:00 meeting ending time, seconded by Vice-Chair Lee. The motion **passed** by unanimous vote, 7-0.*

- J.** The request of **404 Islington Street LLC (Owner)**, for property located at **404 Islington Street** whereas relief is needed for the expansion of use to an Inn with 10 rooms which requires the following: 1) A Special Exception for an Inn from Use #10.30 where the use is only allowed by Special Exception. Said property is shown on Assessor Map 145 as Lot 33 and lies within the Character District 4-L2 (CD4-L2) and Historic Districts. (LU-22-74)

SPEAKING TO THE PETITION

Attorney John Bosen was present on behalf of the applicant, along with the inn's owner Timothy Johnson, project engineer John Chagnon, and project architect Rob Harbeson. Attorney Bosen reviewed the petition, noting that the inn used to be a 7-room one with an extra room for the caretaker, but since it would now be a keyless check-in model, there was no need for an on-site caretaker. He said the applicant wanted to increase the units to 10 rooms and would renovate the interior. He said the project went before the HDC and received approval for an ADA wheelchair ramp. He said they also went before the Technical Advisory Committee (TAC) and the Planning Board and had a fire and inspection walkthrough. He said no other changes were proposed that would increase the footprint. He said the inn has a grandfathered use but they needed the special exception because the units would increase. He reviewed the criteria.

Vice-Chair Lee asked what would happen to a customer after driving in the parking lot and getting out of the car. Attorney Bosen said the person would have a code to access the room, and if there were any problems a professional management company was only a few minutes away.

Chairman Parrott opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

Elizabeth Bratter of 159 McDonough Street said the applicant did a lot of little things that were important, like making sure there was parking, but she was concerned about what would happen in the months of May and June when there were engagement and wedding parties in town and the entire inn was rented out to one of those parties. She suggested that the board stipulate that if the whole inn is rented to one party, there would be some kind of ‘babysitting’.

SPEAKING IN OPPOSITION TO 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 special exception as presented and advertised, seconded by Mr. Rossi.*

Ms. Margeson said if the applicant proved that the criteria for a special exception were met, then the board is compelled to grant it. She said the use was permitted in the district by special exception and would not pose any hazard to the public or adjacent properties on account of potential fire, explosion, or release of toxic materials; it would pose no detriment to property values in the vicinity or change in the essential characteristics of the area. She noted that the inn had been operating for a long time as a B&B and there would be a change in use but the function would remain the same. She said granting the special exception would pose no hazard on account of the location or scale of the building or other structures, parking areas, accessways, odors, smoke, gas or other pollutants, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles, or other materials. She said it would pose no creation of a traffic safety hazard or substantial increase in the level of traffic congestion in the area. She noted that the building was only going from a 7-unit to a 10-unit building. She said parking would be dealt with by a Conditional Use Permit (CUP) by the Planning Board. She said granting the special exception would pose no excessive demand on municipal services including but not limited to water, sewer, waste disposal, police and fire protection, and schools, and there would be no significant increase of stormwater runoff onto adjacent properties or streets and no change to the existing footprint. She said the board could not put a stipulation on a special exception, and even if it could, she would not support it because a party renting the whole inn could have done so under the old use as well. Mr. Rossi concurred and had nothing to add.

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

- K.** The request of **Safley Family Revocable Trust Agreement (Owner)**, for property located at **1121 South Street** whereas relief is needed to demolish the existing garage and construct a new garage and deck which requires the following: 1) A Variance from Section 10.521 to allow a 3.5' left side yard where 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 150 Lot 20 and is located within the General Residence A (GRA) District. (LU-22-137)

SPEAKING TO THE PETITION

The applicant Natalie Safley said she wanted to replace the garage with a new one and a deck. She said she spoke to all the abutters and they all approved the designs. She reviewed the criteria and said they would be met.

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

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

Ms. Eldridge said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. She said it would do substantial justice because there had been a garage there for many years and there would continue to be one, and it hadn't been a problem for the neighborhood. She said there was no other place to put the garage, so it was a reasonable request. She said much of the deck wasn't above 18 inches and wouldn't really need the board's approval. She said the variances should be granted. Mr. Mannle concurred.

Mr. Stith said a stipulation was needed, and the motion was **amended** as follows:

*Ms. Eldridge moved to **grant** the variances for the petition as presented, seconded by Mr. Mannle, with the following **stipulation**:*

- 1. The portion of the deck above 18 inches shall be 8 feet 10 inches.*

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

- L.** The request of **531 Islington Street Portsmouth LLC (Owner)**, for property located at **531 Islington Street** whereas relief is needed to replace the existing menu board which requires the following: 1) A Variance from Section 10.835.31 to allow a menu board to

be 26 feet from the rear lot line and 40 feet from the side lot line where 50 feet is required for each. 2) A Variance from Section 10.1261.30 to allow direct lighting in the Historic District where external illumination is the only type of illumination allowed. Said property is located on Assessor Map 157 Lot 5 and is located within the Character District 4-L2 (CD4-L2). (LU-22-38)

SPEAKING TO THE PETITION

Attorney Sharon Somers representing the applicant said the building's exterior would be renovated and upgraded and they were seeking relief for setbacks from the rear and side for the new speaker tower canopy and the menu board, as well as the type of lighting for the menu board. She showed their locations on the exhibit, noting that they would face out toward the rear of the property instead of being flush against the building. She said they had a work session with the HDC and received favorable comments. She reviewed the criteria in detail.

Ms. Margeson asked if there would be internal illumination of any other signs on the building other than the canopy and the menu board. Attorney Somers said the other signs would only be refaced and that the only sign that required the board's review was the menu board because it was a new sign, whereas the other signs were grandfathered. She said the current menu board had internal lighting and the new board would have LED screen lighting.

Chairman Parrott opened the public hearing.

SPEAKING IN FAVOR OF OR IN OPPOSITION TO THE PETITION

No one spoke.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Elizabeth Bratter of 159 McDonough Street said the building was completely dark when she walked by it at night. She said the new sound equipment would probably be an improvement but she suggested that a lid be placed over it and that trees be planted to help absorb the sound. She also noted that someone walking down Islington Street by the fence could not be seen from the cars coming out of the drive-thru due to the blind spot.

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

DECISION OF THE BOARD

Mr. Rossi said the board recently considered another request for internal illumination, but the Dunkin Donuts signage was really more of a digital menu board and hidden from the public, so it was significantly different than the other request. He said he said would vote in favor of the project. Chairman Parrott agreed.

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

Mr. Rossi said granting the variances would not be contrary to the public interest because it wouldn't impact what the public saw as they went down the sidewalk and street. He said it would observe the spirit of the ordinance, which is designed for signage that was meant more as a visible advertisement for a facility. He said substantial justice would be done because no public harm would outweigh the benefits to the business owner. He said the values of surrounding properties would not be diminished because they were mostly commercial uses or empty parking lots, which was a special condition that shielded the menu board from the public view. He said there was no relationship between the ordinance and the fair and good use of the property.

Mr. Mannle concurred and said granting the variances would improve the property and make it less nonconforming.

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

M. REQUEST TO POSTPONE The request of **Jeffrey M. and Melissa Foy (Owners)**, for property located at **67 Ridges Court** whereas relief is needed to construct a 718 square foot garage addition with living space and deck above which requires the following: 1) A Variance from Section 10.521 to allow a 15.5' front yard where 30' 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 207 Lot 59 and is located within the single residence B (SRB) District. (LU-22-139) **REQUEST TO POSTPONE**

DECISION OF THE BOARD

The petition was **postponed** to the August 16 meeting.

IV. OTHER BUSINESS

There was no other business.

V. ADJOURNMENT

The meeting was adjourned at 10:53 p.m.

Respectfully submitted,

Joann Breault
BOA Recording Secretary