

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

6:15 P.M. - Non-Public Session (*Conf. Rm. A*)

February 22, 2023

7:00 P.M. - Regular meeting begins

MEMBERS PRESENT: Phyllis Eldridge, Chair; Beth Margeson, Vice Chair; Paul Mannle; Thomas Rossi (via Zoom); David MacDonald; David Rheame; Jeffrey Mattson, Alternate

MEMBERS EXCUSED: None.

ALSO PRESENT: Stefanie Casella, Planning Department

**PLEASE NOTE: ITEMS (III.) E. THROUGH J. WILL BE HEARD
AT THE FEBRUARY 28, 2023 BOARD OF ADJUSTMENT MEETING.**

*Mr. Mannle moved to close the 6:15 non-public session, seconded by Mr. Mattson. The motion **passed** by unanimous vote, 7-0.*

Chair Eldridge called the regular meeting to order at 7:03 p.m.

I. APPROVAL OF MINUTES

A. Approval of the January 17, 2023 meeting minutes.

The following amendments to the January 17 minutes were requested:

Page 5, second paragraph, first line: The sentence should read: Mr. Rheame said Attorney Durbin included a tax map and that he indicated that the property was unfairly burdened by being in the Waterfront Business District because its waterfront was not useful.

Page 12, first line: The sentence should read: He said the public had no outweighing concerns that would make what the applicant was looking for unjust.

Page 10, fifth line from the top: The phrase should read: 'She said the applicant met these criteria'.

Page 12, first line of last paragraph: The sentence should read: Mr. Rossi asked if the addition was being considered as an attached accessory dwelling unit.

*Mr. Mannle moved to **approve** the January 17 minutes as amended, seconded by Mr. MacDonald. The motion **passed** by unanimous roll call vote, 7-0.*

II. OLD BUSINESS

A. Request for Rehearing – 32 Boss Avenue. (LU-22-217)

DECISION OF THE BOARD

*Vice-Chair Margeson moved to **deny** the request for rehearing. She said the ZBA did not make any errors or misapprehend any law or fact in denying the variance. Mr. Rheume seconded.*

Vice-Chair Margeson said the application was for a use variance for an art studio that is not permitted in the zoning ordinance, and the ZBA is unable to give a use variance for something that is not allowed in the zoning ordinance. Mr. Rheume said the applicant did not make any arguments that indicated that the board made an error or that there was information that wasn't presented at the time of the application. He said the applicant did include additional information and/or changes to his application but that it would be a new application that the board could take under review and determine whether Fisher v. Dover applied. He said the applicant also made an argument as to the fairness of the decision and whether the ordinance should better reflect an art studio type of use. Mr. Rheume said he believed that the ordinance was remiss on that count but that the current zoning was in place and thought the board correctly made a suitable interpretation of the zoning ordinance. Mr. Mattson said the request for rehearing made an interesting point regarding the fact that the zoning ordinance should probably allow art classes and favor the arts in regard to the Master Plan, but it didn't address the issue of hardship with that particular property, which was the main concern, and that had not changed. Chair Eldridge said she had the same thoughts as Mr. Rheume and Mr. Mattson and would support the motion.

*The motion to deny **passed** by a vote of 7-0.*

B. Request for Reconsideration of Rehearing Request – 67 Ridges Court. (LU-22-199)

Mr. Macdonald recused himself as an abutter.

DECISION OF THE BOARD

*Vice-Chair Margeson moved to **reconsider** the request for rehearing, based on the arguments raised in Attorney Phoenix's memo about Mr. MacDonald not recusing himself as an abutter. Mr. Rheume seconded the motion.*

Vice-Chair Margeson said Mr. MacDonald recused himself and a new vote could be taken on the matter. Mr. Rheume agreed that it was the correct approach.

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

Mr. Rheume said the applicant previously came before the board and was denied, after which the applicant reworked the application and was denied based on the decision that Fisher v. Dover applied. Mr. Rheume said he thought it was a close vote of an undersized board at the time and it was brought up that Fisher v. Dover should not apply, which was the motion that was made and was the opposite of the normal motion that would be made to invoke Fisher v. Dover. He said it was further compounded by the nature of the discussion surrounding that motion, so he did not think the applicant got a full understanding of the board's reasons for invoking Fisher v. Dover. He said the application should be reheard to allow the board to look at it again and definitively decide and explain their thinking.

*Mr. Rheume moved that the board **grant** the Request for Rehearing to be held at the March 21 meeting, seconded by Mr. Mattson.*

Vice-Chair Margeson said the meeting was held on a day that she was ill, but that she watched the video and that she would vote in favor of the motion in this instance to remove any procedural errors for purposes of this application. Chair Eldridge agreed.

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

Mr. Macdonald resumed his voting seat.

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

The petition was postponed to the March meeting. (There was no vote taken).

Mr. Rossi recused himself from the following petition.

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

DECISION OF THE BOARD

Ms. Casella noted that it was a continued discussion to decide among three options, as noted on the City Staff memo. Vice-Chair Margeson said the application was heard at the previous meeting and that it was tabled or postponed for the purpose of allowing the applicant to return. She said the board had three options as to which way they would want the application to be heard. She said she objected at the previous meeting to the application being postponed or tabled because she hadn't felt that it met the criteria for that. She said she believed that the board should vote the application up or down based on the information that was presented to them. She said the application did not lack sufficient information to take action, which would be the third option of denying without prejudice. She said the board should choose Option 2 on the information presented at the January 17 meeting and vote to approve with stipulations or deny the application. Mr. Rheume said he didn't understand what the defect was in the motion that was made. He said that, in similar circumstances when the board reconsidered an application, it was a noticed item on the agenda and they voted at that point in time whether or not they felt that the public hearing should be reopened. He asked if the applicant had resubmitted anything. Ms. Casella said the applicant resubmitted information to the City Staff after consulting with the Legal Department. She said it was advised that the board not be provided with that submission until a decision was made on whether the board wanted to see that new information. Mr. Mattson said he was inclined to not re-open the public hearing because he didn't see the benefit. He suggested Option 3, denying without prejudice, but was open to the discussion for Option 2 to make a decision on it that night. He said Option 3 was more in line with the intention of tabling the vote.

Assistant City Attorney Trevor McCourt was present and explained that the vote taken to table the application occurred after the public hearing closed, and that was the reason City Staff interpreted the vote to mean that the application would be postponed, which would preclude a public hearing or acceptance of any new information on the application. He said the applicant did submit more information but the board could not accept that information unless there was a public hearing that would be to be noticed. He said Option 3 would provide the board the opportunity to deny without prejudice and would get around the Fisher v. Dover issue. He said the applicant could resubmit a similar application but that it would require a finding of fact by the board that there is some other additional information that the board needs to reach in its conclusion. Mr. Rheume asked what the Legal Department thought would have been a better motion to avoid this situation. Attorney McCourt said the public hearing could have been reopened at that time and then the application could have been continued to a certain date, which would have avoided the need to re-notice it, but the public hearing was closed, and to reopen it and would require a suspension of the rules. Vice-Chair Margeson said she interpreted it at that time of the public hearing that the board would have denied the application without prejudice because they made the finding that they lacked the sufficient information to take action. She said her objection is that she didn't think the board lacked sufficient information and that she felt that the applicant was encouraged to revise the application based on the comments the board made while they were deliberating, and she thought that was improper.

Mr. Rheume said he didn't think the issue was the lack of sufficient information because it would have implied that the applicant had not met all the zoning board requirements for information to be submitted for the board to have full and proper understanding of the case. He said he believed that the applicant provided the board with sufficient information and thought the concern was that there was a recognition

that there was some merit to the case, but there were elements of it that were unsatisfactory and could be remedied by the applicant. He said another opportunity could have been given to the applicant to make the necessary changes to get an approval, but it was unclear if those changes would constitute something that wouldn't invoke Fisher v. Dover if the board denied it. He said it seemed an opportunity to get to the right answer, however. He said in the past, the board had done that and the application would be re-noticed, and if the applicant provided new information, the application would be reheard.

*Vice-Chair Margeson **moved** to make a decision on the information presented at the January 17 meeting (Option 2) and that the board should vote to approve with stipulations or deny the application. Mr. Mannle seconded the motion.*

Vice-Chair Margeson referred to her previous comments. She said she felt like this was not a situation where the board lacked sufficient information and she thought it was the most appropriate thing for the board to vote on the application as it was presented. Mr. Mannle concurred, saying the applicant came before the board with a full packet and the board had all the information to vote. He said the applicant wasn't there to take the temperature of the board, like at a work session, and that it would be unfair to other applicants if the board let the applicant make adjustments to get approval. He said he favored Option 2. Mr. Rheume said it wasn't as black and white. Due to the sensitivities associated with the Waterfront Business District and the questions the applicant was bringing forward in terms of its appropriate applicability of his specific application, Mr. Rheume thought there was enough concern to give the application additional opportunity. He said the board was there to work with the applicant and deal with the shades of gray involved with each application and to treat each one individually.

*The motion **passed** by a vote of 5-1, with Mr. Rheume voting in opposition.*

*Vice-Chair Margeson then moved to **postpone** voting on the application to the March 21 meeting so that all the members could re-read the applicant's materials, rewatch the deliberations, and make an informed decision based on the presentation and discussions. Mr. Rheume seconded the motion.*

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

III. NEW BUSINESS

Mr. Rossi resumed his voting seat.

- A. The request of **Valway Living Trust and William P and Elizabeth Valway Trustees (Owners)**, for property located at **51 Spinney Road** whereas relief is needed to construct a new detached garage which requires the following: 1) Variance from Section 10.573.20 to allow a) 4 foot side yard setback where 10 feet is required; and b) 4 foot rear yard setback where 10 feet is required. 2) Variance from Section 10.521 to allow 27% building coverage where 20% is required. Said property is located on Assessor Map 171 Lot 9 and lies within the Single Residence B (SRB) District. (LU-22-235)

SPEAKING TO THE PETITION

The owner William Valway was present. He reviewed the petition and criteria and said the criteria would be met. He noted that the garage would replace the existing shed.

In response to Mr. Rheume's questions, Mr. Valway said 80 feet was the circumference around the building and was intended to show the garage's location. He said there would not be a straight line into the garage because there was a maple tree in the way. He said he couldn't meet the 10-ft requirement for square footage at the back of the property line because it would be too close to the tree, and if he flipped the garage door opening, it would impact the garden. He said a substantial storage area was needed because the fieldstone foundation could not store anything, and having basic storage in the garage along with room for one car would be ideal. Vice-Chair Margeson asked if the garage's depth would accommodate the car. Mr. Valway agreed and said it would be 16 feet deep.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chair Eldridge closed the public hearing.

DISCUSSION OF THE BOARD

Mr. Rheume said he was torn because it was new construction and the board wanted to hold to the setback requirements unless there were compelling reasons, like a hardship or something unique. He said the applicant indicated that the tree and garden were unique factors but was asking for both a garage and a storage area to replace a small storage area. He said one of the applicant's arguments was that the lot was small, which was a hardship. Mr. Rheume said there were all kinds of small lots in Portsmouth and most didn't have garages. He said, however, that the abutting properties would have light and air if the garage were allowed. He also noted that the garage was essentially a two-car garage but only half would be used for a car but thought it could be smaller and more respectful of the setbacks. Mr. Mattson said the lot was less than a third of the size of the required minimum lot size for a single-family residence, so it was smaller than was intended for that zone. He said it would be great if the structure could be placed on one of the two setback requirements, but he saw the challenges with that. He said the neighbors expressed support but he agreed with the point of it being new construction and hoped it could be achieved without needing relief. Vice-Chair Margeson said she also had concerns and but thought the applicant addressed them. She noted that the property was smaller than the adjoining ones and said she was inclined to grant the variance request but thought the structure could be smaller. Mr. Rossi said it was a close call but thought it was a large variance being requested with regard to building coverage percentage and lot line clearance. He said he felt that the proposal overburdened the property for what it was and didn't think the property had the capacity to take on the garage in that location. He said he would not support the variance request. It was further discussed. Chair Eldridge said she would support the application because she felt the change in coverage from 20 to 27 percent wasn't that significant. She said even though the proposed garage was bigger than the shed, it would be far enough from the nearby buildings and would not affect the neighbors' light and air.

DECISION OF THE BOARD

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

Mr. Rheaume said granting the variances would not be contrary to the public interest because the garage would be situated at the rear side of the property and wouldn't be seen by the public. He said the overall coverage, while somewhat higher than allowed by the ordinance, would be much smaller than what the ordinance envisioned compared to some of the neighbors' properties that had a fair amount of street frontage taken up by buildings with attached garages. He said a passerby would not perceive the lot to be overburdened with too much structure, and there was positive reinforcement received from some of the abutters. He noted that the old growth tree and garden would not be impacted as well. He said granting the variances would meet the spirit of the ordinance because the applicant's total building coverage even at 27 percent would be perceived as much less than what could be allowed with a much bigger lot. He noted other factors that were discussed in terms of setback and said there would be no negative impact on the neighbors' light and air. He said granting the variances would do substantial justice because it would weigh in favor of the applicant. He said there wasn't enough weight to say that the applicant couldn't build the somewhat large square footage but not terribly high garage/storage area, so he thought what the applicant was asking for was reasonable. He said granting the variances would not diminish the values of surrounding properties and would probably increase them because a garage was a highly sought-after amenity. He said the property had characteristics relative to the others around it and in the zone that made for a hardship because the lot was smaller than what was expected by the zone and the 20 percent requirement for coverage envisioned a much larger lot. He said other hardship factors were the existing trees, which forced the garage backwards, and even if the applicant submitted a smaller plan from a footprint standpoint, it would probably still be shoved back toward the back property line. He said the only sunlit space in the backyard for gardening and other activities would be negatively impacted if the garage were pushed ten feet away. He said making the garage smaller might help, but there wasn't enough to say that pushing it away from that property line would really accomplish anything further than allowing the applicant the relief.

Mr. Mannle concurred. He said he was familiar with the lot, and given the size of it and what it was zoned for, he felt it was in itself a hardship. He said the building coverage didn't bother him because even a 10'x10' shed would require a variance. He said all the setbacks were four feet instead of 10, and he didn't see that it was a big problem given the nature of the lot and the support of the direct abutter.

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

- B.** The request of **Paulsen Family Revocable Trust 2017 Christian Paulsen and Anja Paulsen Trustees (Owners)**, for property located at **55 Thornton Street** whereas relief is needed to construct a second story addition over the existing first floor which requires the following: 1) Variance from Section 10.521 to allow an 8.5 foot front yard setback where 15 feet is required. 2) Variance from Section 10.321 to allow the extension and enlargement of a non-conforming structure. Said property is located on Assessor Map 143 Lot 19 and lies within the General Residence A (GRA) District. (LU-23-2)

SPEAKING TO THE PETITION

The applicant Christian Paulsen was present to speak to the petition. He said he wanted to add two small bedrooms above the first floor. He reviewed the criteria and said they were met.

Mr. Rheaume referred to the image in the packet and asked if the dark-shaded area was the only thing encroaching into the setbacks. Mr. Paulsen pointed it out on the drawing and highlighted the existing and proposed items.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chair Eldridge closed the public hearing.

DECISION OF THE BOARD

*Mr. Mannle moved to **grant** the variance requests as presented, seconded by Mr. Mattson.*

Mr. Mannle said it was not a big ask, given the criteria, and that it would make the second floor less conforming. He said granting the variances would not be contrary to the public interest because the public would not be affected. He noted that there were three letters of support from the direct abutters. He said granting the variance requests would observe the spirit of the ordinance. He said the applicant had already redone some of the house and had a growing family. He said substantial justice would be done because it would make the second floor addition less nonconforming. He said granting the variances would not diminish the values of surrounding properties and in this case would be an improvement because it would be a bigger house with a brand new structure and would enhance the surrounding properties. He said literal enforcement of the provisions of the ordinance would result in unnecessary hardship because the property had special conditions that distinguish it from others in the area, and so on. He said the applicant had a growing family and just wanted to increase the size of his house, and the only thing holding him back was the setback rules, and the lot was already nonconforming. For those reasons, he said the variances should be granted.

Mr. Mattson concurred and said it seemed like the reason for the variance was because it was an existing home built before the zoning existed, and it was nonconforming and not realistic to pick up and move the house. He said anything that would have been done to the house would require a variance, and in this case, what’s being asked for would be less nonconforming. He said the hardship was that the existing home was built before zoning and that it made sense to approve the application.

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

- C. The request of **Michiyo Bardong and Shawn Bardong (Owners)**, for property located at **39 Dearborn Street** whereas relief is needed to construct a second story over the existing 1.5 story building, remove and expand the front porch, and remove and expand the existing mudroom on the eastern side of the structure which requires the following: 1) Variance from Section 10.521 to allow a) 2 foot rear yard where 20 feet is required; and b) 9 foot side yard where 10 feet is required. 2) Variance from Section 10.321 to allow the extension and

enlargement of a non-conforming structure. Said property is located on Assessor Map 140 Lot 3 and lies within the General Residence A (GRA) and Historic District. (LU-23-5)

SPEAKING TO THE PETITION

Project architect Amy Dutton was present on behalf of the applicant and reviewed the petition and the criteria in detail.

Mr. Rossi noted that there was a stipulation for the view easement area in the April 21, 2015 variance, and Ms. Dutton showed the property on the map and the view easement was discussed. Mr. Rheume asked if the existing foundation could withhold the structure, and Ms. Dutton agreed and said the intent was to reuse the existing foundation. Mr. Rheume asked why a Dutch colonial architecture was chosen and if the applicant felt that it provided an advantage in terms of the overall height. Ms. Dutton said she did. She said the house didn't look like a cape and that the attic space would only go up four feet. She said the current roof system was failing. Mr. Rheume said it could be rebuilt. He asked what the cape's historic background was. Ms. Dutton said it was an 1800s cottage. Mr. Rheume asked about the reference to a Dearborn Lane behind the property that wasn't a city street and if there were any easements on Lots 140-5 and -7 that would indicate that it was something the city retained rights to. Mr. Bardong said there was no street and that the land went into the backyard of the neighboring property. He said there was no Dearborn Lane and that their street was Dearborn Street.

Vice-Chair Margeson asked if the connector would go into the shed. Ms. Dutton said it would touch the shed but that it couldn't be accessed. She said the shed was like a garage but wasn't currently used like one and the intention was to have one car parked in it. Mr. Bardong said it had a poured foundation and could fit a small car. Vice-Chair Margeson asked if the easement was done when the variance was granted for that. Mr. Bardong said there was a long history of the previous owner storing his equipment and the shed sat in the easement and obstructed views. Vice-Chair Margeson said she was confused about the fact that the right yard was two feet, but the variance granted for the shed noted that it would be five feet. Ms. Dutton said the two feet was the rear.

Chair Eldridge opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

No one spoke.

SPEAKING IN OPPOSITION TO THE PETITION

Michael Stasiuk of 33 Dearborn Street said he was the abutting neighbor with the shed issues. He said he had close neighbors on three sides of his house and a tiny backyard. He said the applicant stated that there was no encroachment, but the mudroom designed to be an addition was built toward his house. He said the proposal also indicated that the changes could not be seen by the neighbors, but the roofline would be seven feet higher, which would block his view of the sky from his kitchen window and his sun in the summer. He said he had been firm about the shed being only a storage space and that connecting it to the house was a red flag. He said the addition would impact his view of Mill Pond, and if the house

were seven feet higher, he would be surrounded by houses on all four sides, which would be a hardship. He said he was also surprised that a cape in the Historic District could be turned into a Dutch colonial.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Mr. Bardong said his lot coverage was 12.3 to 12.5 percent of the lot and the other houses were built to a hundred percent of their property lines. He said everyone had to deal with hardship because it was a tight neighborhood. He said when he and his wife purchased the property, they knew there were a lot of people around them but didn't know that there was a disagreement around the property and how it impinged on Mr. Stasiuk's view to the pond. He said that was why the view easement was agreed upon and the shed was built. He said the cape had gone through a lot of renovations through the years and the intent for the Dutch colonial was to get more use of the second floor.

Vice-Chair Margeson said she thought Ms. Dutton said the family room would be attached to the shed and it would be open. Mr. Bardong said it would just be attached. Vice-Chair Margeson said that, in terms of the roofline and the existing structure, building a second floor wasn't necessary and the roof could just be fixed. Mr. Bardong said the roof wasn't up to code and that more interior space would be lost to bring it up to code. Ms. Bardong added that the reason for the second floor was because they only had two bedrooms for a family of five and they needed the space in addition to fixing the roof, which was why they wanted to raise the roofline. Vice-Chair Margeson asked when the Bardongs bought the property and was told it was in October 2022.

No one else spoke, and Chair Eldridge closed the public hearing.

DISCUSSION OF THE BOARD

Mr. Rheume said the applicant was asking for three pieces. One piece was to make the family room the center connection between the shed and the home. He said that just barely crossed over the left-hand property side and was far west from the main home. He said the roofline of that was much lower than the shed and the 2017 addition, so that addition wasn't that concerning and had almost no impact on setbacks and its height relative to neighbors. He said the second piece was the mudroom/entryway, a one-story structure that was slightly nonconforming but would be more conforming. He said the third piece was to expand the original cape vertically 7.5 feet taller than before and replace the traditional gable by a Dutch colonial. He said it would be about 7.5 feet higher than the gable roof and would be the most encroaching portion of what the applicant was asking for. He said it would most affect the other property owners as well. He said the structures on Lots 140-2 and -4 were two-story ones, and that portions near the subject property was probably not a buildable lot. He said the board wasn't the HDC and agreed with some of the abutter's concerns regarding the nature of the design changes but didn't think the board had purview over the historical aspects. He said he didn't like the look of the proposed structure because it felt more massive than existing, but because of the unique character of the surrounding properties and the issues of light and air and so on, he didn't think there was enough to say that the variances shouldn't be approved.

Vice-Chair Margeson disagreed. She said the general purpose and intent of the zoning ordinance under Section 10.212.6 is the preservation of historic districts and buildings and structures of historical interest

and that she did apply that criteria to variance requests to structures within the Historic District. She said it was a 1700s structure, and raising and putting a Dutch colonial on top of it violated the spirit and intent of the ordinance. She said she found the extension of the family room to the shed made the shed not an accessory structure. She said the applicant said they would not use it or extend it from the family room into the shed, but that made it not an access structure and also violated the 2015 variance application. She said the applicants knew what they wanted when they bought the property in 2022, which weighed on her mind in terms of hardship and necessary reasonable use of the property. She said she would not support the request.

Mr. Mattson said he agreed with both. He said what was being applied for was relative to the setbacks, which were not becoming any more nonconforming. He said the spirit of the ordinance applied to the whole ordinance but the board could give extra weight to what the variance is actually for. He said it was a tough decision and he appreciated the abutter's concerns, but there was no needed variance for height. He said he was also torn about the historic aspect. Mr. Mannle agreed but didn't see the variance requests as a large ask. He said he appreciated the historic aspect of the house but it was an 18th century property, and he asked if that fit in 2023 without reconstruction or renovation, especially for a growing family. He said the roof was failing and the architectural design was for the HDC to decide. He said if the structure was no longer useful, he didn't see the downside to renovating it or building a second story, especially if it was still below the maximum height. Vice-Chair Margeson said the roof could be repaired without getting the second floor. She said the purpose and intent was the preservation of buildings and structures of historic or architectural interest. She said the addition would impact the historic house, and extending the family room would make it no longer an accessory structure. Mr. Rheume said he had strong reservations about the project. He said the zoning ordinance in general talked about preservation and historic districts but he wasn't sure it pointed out where those responsibilities lie. He said if the board saw something that negatively impacted a neighborhood, then he thought the board would have more of a say. He said the HDC was better suited to preserve history.

Mr. Rossi said that, regarding the prior stipulation about the view easement, there was nothing in the proposal encroaching on the view easement, so he thought that was good. He said there may have been ancillary understandings but they didn't result in restrictions to the property. He said as long as the property was not infringing on the view easement, he didn't see it in violation of prior arguments. He said part of preserving historic buildings was to make sure they were still contemporarily useful, and if they ceased to be useful to people who owned and occupied them, they would no longer be preserved and would fall into disrepair, as the applicant's had already started to do. He said there were a lot of ways of looking at the responsibility for preserving historic structures.

DECISION OF THE BOARD

*Vice-Chair Margeson moved to **deny** the variance request. No one seconded.*

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

Mr. Rheume said the board saw a lot of people in Portsmouth who bought property with a pretty view but a less desirable house on it, and then it turned into something quite different than what was there before. He said it was a sign of the prosperity Portsmouth had and that he had regrets about that aspect

of the project but was trying to be as fair as he could to the purview of the board. He said granting the variances would not be contrary to the public interest, noting that two aspects had minimal impacts on encroachment in terms of anything the public could notice. He said it was really the vertical expansion of an existing structure using an existing foundation tight up against one corner of the proposed property, and the total percentage of lot coverage was much smaller than required for the zoning area, so it was the positioning of the home from the 1800s and how the property got formed around it, leaving tight setbacks, which he thought was the most egregious aspect to it. He said the property was well hidden from the public and it was a 7-ft change, and a Dutch colonial felt more imposing than if the roof was simply raised, but the total imposition was not such that it would be outside of what the public would have a greater interest in than the applicant would. He said it would observe the spirit of the ordinance. He said it was a significant change to the required setbacks but it was a very old home on an old property and predated the ordinance. He said it wasn't realistic for the applicant to put the expansion in any other location due to the foundation. He said the two properties around it most affected by the setbacks had characteristics that made the light and air concerns less significant. He said granting the variances would do substantial justice because it was a balancing test of the public's interests, outside of the historic aspects. He said in terms of the board's purview, there were no factors that outweighed the neighboring properties. He said those properties also had tower structures and the applicant's property wasn't close to the side of the properties on Dearborn Street. He said the balancing test was in favor of the applicant. He said granting the variances would not diminish the values of surrounding properties because an improvement would be a positive aspect and there was nothing proposed that would have a negative impact on surrounding properties in terms of their values. He said the main hardship was the foundation that went back a century or more before zoning existed, and he also thought the applicant was benefited by some of the unique nature of the surrounding properties, including their buildability and topography. In the sense of the areas most affected by the vertical expansion, he said there were some things in favor that did distinguish the property from surrounding properties. He said it was a reasonable use for continuing a residential use in a residential neighborhood, and with all those criteria met, he recommended approval. Mr. Mannle concurred and had nothing to add.

Chair Eldridge agreed with Mr. Rheume. She said it was the HDC's scope of approval for the nature and design of the building and that the building didn't have to be compared with anything else in the neighborhood. She said the current building coverage was only 17 percent of the property and still covered a small portion of its lot. Mr. Mattson said there was a view easement in place for the pond also.

*The motion **passed** by a roll call vote of 6-1, with Vice-Chair Margeson voting in opposition.*

- D.** The request of **Sean Morin (Owner)**, for property located at **67 Madison Street** whereas relief is needed to construct a 122 square foot covered front porch which requires the following: 1) Variance from Section 10.521 to allow a) 3 foot front yard setback where 5 feet is required; and b) 36% building coverage where 35% is maximum allowed. 2) Variance from Section 10.321 to allow the extension and enlargement of a non-conforming structure. Said property is located on Assessor Map 135 Lot 36 and lies within the General Residence C (GRC) District. (LU-23-4)

Note: Ms. Casella said there was an error in the advertising and the structure was conforming, so Variance 2 wasn't needed.

SPEAKING TO THE PETITION

The applicant Sean Morin was present and explained why he wanted a porch. He reviewed the criteria and said they would be met.

Mr. Rheume said there was already a screened porch at the rear of the property and asked what advantage a front porch would offer. Ms. Morin said he and his wife spent a lot of time sitting on the front steps watching their granddaughters and interacting with the neighbors, and the porch would allow them to be more part of the neighborhood community. In response to further questions from Mr. Rheume, Mr. Morin said the proposed width of the porch was 7'6" and that the porch needed to be deeper than the neighbor's porch because he was a big guy.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chair Eldridge closed the public hearing.

DECISION OF THE BOARD

Mr. Rheume said two years after the structure was built, a developer looked at the zoning requirements and maxed it out by merging two good-sized structures and allowing them to connect, which the applicant was now taking full advantage of. He said the applicant didn't worry about a porch two years ago when they bought the property. He said the amount of relief was minimal, although the front setback was going in by two feet, which was the reason he suggested a narrower porch. He said the coverage was up by one or two percent, which were small numbers. Vice-Chair Margeson said she didn't have a problem with the application, given that the variance request was so minimal. She said the other unit had a porch, so it would provide some symmetry.

*Mr. Mattson moved to **grant** the variance request, seconded by Mr. MacDonald.*

Mr. Mattson said granting the variance would not be contrary to the public interest because the front porch was in the character of the neighborhood and would not conflict with the purpose of the ordinance. He said granting the variance would observe the spirit of the ordinance because the applicant was asking for a small relief for the front yard setback, from 5 ft to 3 ft, and from 35 to 36 percent coverage. He said substantial justice would be done because the front of the house would be improved and more useful and would not be harmful to the public. He said granting the variance would not diminish the values of surrounding properties because the porch addition improvement would not change and might even increase the value of the home and surrounding properties. He said literal enforcement of the provisions of the ordinance would result in unnecessary hardship because the property had special conditions that distinguished it from others in the area, and owing to those special conditions, a fair and substantial relationship did not exist between the general public purposes of the ordinance provisions and their specific application to the property, and the proposed use is a reasonable one. He said it was reasonable to have a front porch deep enough so that the small amount of relief asked for would make the porch more useful.

Mr. Macdonald concurred and had nothing to add.

*The motion **passed** by a vote of 5-2, with Mr. Rheaume and Mr. Rossi voting in opposition.*

IV. OTHER BUSINESS

There was no other business.

V. ADJOURNMENT

The meeting adjourned at 9:54 p.m.

Respectfully Submitted,

Joann Breault
BOA Recording Secretary