

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

**7:00 P.M.** *(Continued from February 22, 2023)*

**February 28, 2023**

**MEMBERS PRESENT:** Phyllis Eldridge, Chair; Paul Mannle; Thomas Rossi; David MacDonald; Jeffrey Mattson, Alternate

**MEMBERS EXCUSED:** David Rheume; Beth Margeson, Vice Chair

**ALSO PRESENT:** Stefanie Casella, Planning Department

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**I. APPROVAL OF MINUTES**

**A.** Approval of the January 24, 2023 meeting minutes.

On page 4, third paragraph, second line toward the end. The sentence should read: He said even if the applicant could have an entrance on Congress Street, their intention was to have it on the Maplewood Avenue side to activate the streetscape. (The phrase 'was to' was originally repeated twice and was omitted).

On page 9, second paragraph, end of the second line. The sentence should read: He said he knew how it was to live on a busy street and try to back out of one's driveway, but he didn't know if a second driveway would accomplish that. (The phrase 'he know' was replaced with 'he knew').

On page 9, second paragraph, last line. The sentence should read: She said she agreed with Mr. Mattson. (The word 'she' was missing).

*Mr. Rossi moved to **approve** the January 24 minutes as amended, seconded by Mr. Mannle. The motion **passed** by a unanimous vote of 5-0.*

Chair Eldridge announced that there were only five board members present and that an applicant could choose to postpone their petition.

**II. NEW BUSINESS**

**E. REQUEST TO POSTPONE** The request of **The Griffin Family Corporation (Owners)**, and **LoveWell Veterinary Services, LLC (Applicant)**, for property located at **800 Islington Street Unit 1B** whereas relief is needed to allow a veterinary clinic

which requires the following: 1) Special Exception from Section 10.440, Use #7.50 to allow a veterinary clinic where the use is permitted by Special Exception. Said property is located on Assessor Map 154 Lot 1 and lies within the Character District 4-W (CD4W) District. (LU-23-8) **REQUEST TO POSTPONE**

Chair Eldridge noted that the request to postpone was due to improper notice.

## **DECISION OF THE BOARD**

*Mr. Mannle moved to **postpone** the petition to the March meeting, seconded by Mr. MacDonald. The motion **passed** by a unanimous vote of 5-0.*

- F. The request of **Cate Street Development LLC (Owner)**, and **Rarebreed Veterinary Partners (Applicant)**, for property located at **350 US Route 1 Bypass** whereas relief is needed to allow an urgent care veterinary clinic which requires the following: 1) Special Exception from Section 10.440, Use #7.50 to allow a veterinary clinic where the use is permitted by Special Exception. Said property is located on Assessor Map 172 Lot 2 and lies within the Gateway Corridor (G1) and Transportation Corridor (TC) District. (LU-23-9)

## **SPEAKING TO THE PETITION**

Architect Nick Collins was present on behalf of the applicant and said the clinic would be a walk-in one that would treat dogs, cats, and other small animals and would house six exam rooms, a pharmacy, an x-ray room, an office, and so on. He said there would be no crematory or commercial boarding. He reviewed the special exception criteria.

Mr. Mattson asked if the parking was owned by the same parcel, and Mr. Collins said it was.

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. Rossi moved to **grant** the special exception for the application as presented and advertised, seconded by Mr. Mannle.*

Mr. Rossi said the use is permitted by special exception within the ordinance and complies with all the design and intended use and complies with all the requirements for a veterinary facility, so it meets the first standard. Regarding the second standard, there will be no hazard to the public or adjacent properties on account of fire, explosion, or release of toxic materials. He said the applicant

had taken care to ensure the proper handling of gasses such as oxygen that could present such a hazard and would do that in compliance with all applicable regulations, guidelines, and standards. He said granting the special exception would pose no detriment to property values in the vicinity or change in the essential characteristics because the building is located in an area that has a lot of commercial uses. He said there would be no creation of traffic safety hazards because there is easy access from the road. He noted that the road was a heavily traveled one and it would be very surprising if the traffic ingress and egress from a veterinary facility would add in any substantial way to the traffic conditions in that vicinity. He said there would be no excessive demand on municipal services, noting that the applicant stated that the existing supply of water and wastewater extraction were adequate for his purposes. He said the applicant would not create any new police or fire protection hazards and that the building wasn't near enough to a school to be of any concern. He said the property already had a great deal of impervious surface and the proposed use would not add to it, so there would be no increase of stormwater runoff onto adjacent properties or street.

Mr. Mannle concurred. He said the applicant met all six criteria easily. He noted that the old Suzuki dealership used to be in that location and that the proposed use couldn't be more detrimental than that. He said it was a commercial use in a commercial area and that he would support the petition.

*The motion **passed** by a unanimous vote of 5-0.*

- G.** The request of **Aviation Avenue Group, LLC (Applicant)**, and **Pease Development Authority (Owners)**, for property located at **80 Rochester Avenue** whereas relief is needed for the construction of an advanced manufacturing facility which requires the following: 1) Variance from Article 304.03 (e) to allow a 28 foot rear yard where 50 feet is required. Said property is located on Assessor Map 308 Lot 1 and lies within the Pease Industrial District (PI). (LU-22-210)

The applicant's representative was present and said they wished to postpone the petition.

*Mr. Mannle moved to **postpone** the petition, seconded by Mr. Mattson. The motion **passed** by a unanimous vote of 5-0.*

- H.** The request of **Andrea Hurwitz (Srebnik) (Owner)**, for property located at **129 Aldrich Road** whereas relief is needed for the installation of a mechanical unit which requires the following: 1) Variance from Section 10.515.14 to allow a 4 foot side yard where 10 feet is required Said property is located on Assessor Map 153 Lot 35 and lies within the Single Residence B (SRB) District. (LU-23-10)

## **SPEAKING TO THE PETITION**

The applicant's representative Chris Redmond was present via Zoom. He said the original request was that the current condenser be replaced by a smaller condenser in the same location, but the neighbor on the left side of the property asked that the condenser be moved about 10 feet back

toward the rear of the property so that it would be farther away from their kitchen window and behind some bushes. He said his client was fine with moving the condenser to the rear of the home. He reviewed the criteria and said they would be met.

Mr. Rossi said the proposal showed that the existing unit is 5'7" away and the proposed is 4 feet away from the left side lot line, but in the diagram it looked like the new location was actually farther from the left side lot line. Mr. Redmond said it showed that the condenser was moving farther away from the property line but was still within the side setback, so either way, the 10-ft side setback went up to the wall of the residence. Mr. Rossi asked what specific relief was asked for in the revised plan. Mr. Redmond said it was relief from the side setback, just like in the existing plan. He said they were moving it 12 inches farther away than it was in the application, from 5'7" to 6'7". Ms. Casella said five feet would be the new request. Mr. Rossi asked what prevented locating the unit at the rear of the property. Mr. Redmond said it was the bulkhead and the deck.

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

Mr. Mattson said granting the variance would not be contrary to the public interest because the proposal was to replace an existing condenser with a newer and quieter one that needed less relief because it would be farther away from the property line and in the side yard, where it wouldn't be easily visible from the street. He said the spirit of the ordinance would be observed for the same reason, there would be no impairment to the public's health, safety, or welfare, and the essential characteristics of the neighborhood would not be altered. He said granting the variance would do substantial justice because it was a needed improvement for updating the home and energy efficiency and there was no viable alternate location, and there would be no detriment to the public. He said the values of surrounding properties would not be diminished because there was no reason why replacing an old condenser with an improved one would harm property values. He said literal enforcement of the provisions of the ordinance would result in unnecessary hardship because the property has special conditions that distinguish it from others in the area, and owing to those conditions, a fair and substantial relationship does not exist between the general purpose of the ordinance's provision and the specific application of that provision to the property, and the proposed use is a reasonable one. He said the lot was half the width of the required minimum lot for a single family residence and the overall lot size is undersized, and given the location of the home and the driveway, it imposed a hardship that would justify the condenser's location. He added a **stipulation** that the advertised request for relief was for a 4-ft setback and the revised application involves asking for less relief due to the 5-ft setback from the property line, which is farther.

The **amended** motion was:

*Mr. Mattson moved to **grant** the variance for the petition, with the following **stipulation**:*

*1) The mechanical unit is located according to the updated plan presented to the Board at the February 28, 2023 meeting which positions the unit 5 feet from the left yard setback instead of 4 feet as advertised.*

Mr. MacDonald concurred and had nothing to add.

Mr. Mannle noted that when the applicant came before the board for the building variance, the condenser was the closest thing to the side yard. He said he thought they swapped out the size of the condensers because of the two different plans. He said when the applicant applied for the variance before the building variance, the condenser was already four feet from the line with no variance.

*The motion **passed** by a unanimous vote of 5-0.*

- I. The request of the **RTM Trust and Ryan T Mullen and Heidi E K Trustees (Owners)**, for property located at **253 Odiorne Point Road** whereas relief is needed for the installation of a mechanical unit which requires the following: 1) Variance from Section 10.515.14 to allow the mechanical unit to be located closer to a street than the principal structure. Said property is located on Assessor Map 224 Lot 10-19 and lies within the Single Residence A (SRA) District. (LU-23-11)

## **SPEAKING TO THE PETITION**

The applicant Ryan Mullen was present and reviewed the application and criteria in detail. The board had no questions. 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 as presented, seconded by Mr. Mattson.*

Mr. Mannle said the applicant went through a painstaking process to find another location for the condenser and presented great reasons why it couldn't be located anywhere else. He said the best reason was that it was in the Wetlands Protection Zone. He said the property, like every property in Portsmouth that's located on a corner, suffers from a hardship. He said he understood the city's motivation for doing it, but if the address is already on Gosport Road, that was the front of the house regardless of what's on the other side. He said the proposed generator would be located exactly where logic said it should be, along with all the other existing systems to the house, and was farther away from Gosport Rd than Odiorne Point Rd. He said granting the variance would not be

contrary to the public interest because the public would barely see it and there would be more shrubbery around it. He said it would observe the spirit of the ordinance because a generator was a good idea for someone who wanted the house to be listed as on Odiorne Point Rd. He said granting the variance would do substantial justice owing to the hardship and would not diminish the values of surrounding properties and would most likely increase them because the owner's property will be worth more. He said literal enforcement of the provisions of the ordinance would result in unnecessary hardship. He said the hardship was the corner lot and that the applicant already went through the due diligence to show that other locations were bad ideas. For those reasons, he said the variance request should be granted. Mr. Mattson concurred. He said the applicant made a compelling case because if the lot wasn't a corner lot, a variance wouldn't be needed because the condenser was on the side of the house. He said the wetlands were also a factor that affected the property. He said the generator would be quite far from the neighbors and any of the streets and that noise would not be an issue. Mr. Rossi said he had experience with that type of generator and knew the noise was very minimal. He said the applicant would find himself going out the first few weeks to make sure the unit was running through its test cycle because he wouldn't hear it.

*The motion **passed** by a unanimous vote of 5-0.*

- J.** The request of the **Black Heritage Trail of New Hampshire (Owner)**, for property located at **222 Court Street** whereas relief is needed to install one 24 by 28 foot mural and one 3 by 2 foot sign which requires the following: 1) Variance from Section 10.1251.10 to allow max aggregate sign area of 686 square feet where 36 square feet is allowed; 2) Variance from Section 10.1251.20 to allow max area for individual sign of 678 where 16 square feet is allowed; and 3) Variance from Section 10.1242 to allow more than one sign on building facing the street; and 4) Variance from Section 10.1271 to allow a sign on the side of the building that is not facing a street. Said property is located on Assessor Map 116 Lot 33 and lies within the Character District 4-L1 (CD4-L1) and Historic District. (LU-23-12)

## **SPEAKING TO THE PETITION**

Barbara Ward of 16 Nixon Park said she was the senior grant writer and coordinator of special projects at the Black Heritage Trail of New Hampshire at 222 Court Street. She said in 2021, they became aware of the plans of The Friends of Ruth Blay organization to promote the installation of murals throughout the city to bring awareness to prominent women of Portsmouth's storied history, and one of the women on the list was Ona Judge Staines, the seamstress for Martha Washington. She said a team of Portsmouth architects was enlisted to conduct the preservation assessment and the request was submitted to the NH Preservation Alliance as well. She said the building was built between 1797 and 1819 and the mural would be painted on the west wall, which was a firewall and wasn't integral to the building. She noted that there would be a protective layer between the appropriate chosen paint and the mural itself. She said the sign would be placed on the street frontage to provide historical background on the mural. She said the neighbors were in support. She reviewed the criteria in detail.

Mr. Mannle clarified that the new 3'x2' sign would replace the old sign in the same location and would have the information for the mural and no advertisement on it. Ms. Ward agreed and said the sign on the front of the building would have the History Through Art logo. Mr. Rossi said the hardship criteria was the most difficult one to put into words and started with the concept that the property is burdened by a restriction in a manner that's distinct from other similarly situated properties. He asked what made the property different in a way that was relevant to the application compared to the surrounding properties. Ms. Ward said the building was an office building in a mixed-use residential area, and because they were between residences, it caused issues relative to the business. She said it was a difficult one to put into words because of the size of the lot and that they didn't have a lot of options. Chair Eldridge noted that Figure 3 indicated that the mural would be installed on the front lower quarter of the façade, yet the next photo showed that the mural took up the entire wall. Mr. Ward said it was her mistake, noting that it was a two-step process in submitting the application. Mr. Rossi clarified that the entire wall was 686 feet. Ms. Ward agreed and said it was a little bit above the ground level and stopped at the eaves. Mr. Rossi asked if the wording of the variance request was accurate to the intention or was based on the misstatement. Ms. Ward said it was a misstatement based on the two-step process. Mr. MacDonald said there were other examples of public art similar in kind throughout Portsmouth, like the Whaling Wall that was painted years ago and suffered over time due to exposure to the elements. He asked who would maintain the mural and where the funding would come from. Ms. Ward said the Black Heritage Trail organization would maintain it, but in the far future, someone may want to remove it. She said they also wanted to protect the brick underneath so that the removal of the mural wouldn't damage anything. She noted that the Black Heritage Trail organization had no intention of moving and were dedicated to the building and to the story of Ona Judge.

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. Mannle said his daughter had a part in painting the Whaling Wall and thought its deterioration was the city's responsibility because they used the cheaper sealer instead of the one recommended by the painters. He said he had no problem with the front of the house and the signs since the mural wasn't like the murals at Toscana, which were advertisements of what was depicted in the store. He said the proposed mural was art and not an advertisement. He said there was no mention of murals or paintings in the zoning ordinance, but it did refer to advertisements quite a bit. Since the proposed mural had no advertisement, he said he didn't consider it a sign. He said the hardship was the zoning ordinance, in his opinion. Chair Eldridge said the Ruth Blay mural was approved under the same circumstances. Mr. Mannle said he had a hard time with a mural that has no advertisement, no names, and no lettering because it was just art work on a wall to be called a sign and to fall under the sign ordinance. Chair Eldridge said there was no writing on the Ruth Blay mural. Ms. Ward said the size of the signs with the writing and the image of Ruth Blay were

indicated as separate signs in their application. Ms. Ward said there were discussions of having an ordinance related to murals. Mr. Rossi said his concern was that, once the board approved a sign of that size, the Black Heritage Trail of NH was the current property owner and there won't be a 'forever'. At some point, he said the variance stays with the property and it may not be public art work but a giant advertisement or political slogan, which would put a completely different character on what the board was being asked to approve. Ms. Casella said the board was approving what was presented and if the design were to change, it would need to come before the board.

## DECISION OF THE BOARD

*Mr. Rossi moved to **grant** the variances with the following **stipulation**:*

- 1. That the sign will be an artistic image only of Ona Judge and will not be altered for any other purpose.*

*Mr. Mannle seconded the motion.*

Mr. Rossi said granting the granting the variances is not contrary to the public interest and the spirit of the ordinance is observed. He said that particular zone allowed a permitted use for a museum, and what the Black Heritage Trail of NH was doing was creating a free-to-the-public art display that he would consider being akin to an open access museum for anyone to see, which was consistent with the spirit of the ordinance. He said granting the variances would do substantial justice because there would be no loss to the public. He said a compelling case could be made that it would be an enrichment for the public, so there would be no gain to be had by the owners of the property that would be outweighed by a loss to the public. He said the values of surrounding properties would not be diminished. He said the abutter seemed to have no objection to the mural, noting that the abutter would be in a position to make an objection if he thought there was an impact to his property values. He said he took the absence of any public comment of that nature to be support for the idea that the proposal will not have a negative impact on surrounding properties. Relating to hardship of the property, he said the special condition of the property was that it contains the brick wall that was placed there at some time in history, and that wall needs to be preserved by applying a coat of paint anyway. Therefore, making an artistic use of it is very consistent, and a unique aspect of the property is that it needs to have paint on the wall in order to preserve it, so that's the special condition that justifies the use in this manner.

Mr. Mannle concurred and said he was glad the stipulation was added. He advised the applicant that something should be applied on the mural once it was completed so that it could be easily cleaned if it was vandalized. Mr. Mattson said that the project was interesting and unique because of the property's history and because of the fire that changed that whole area. He said the unique conditions made the wall ideal for a mural. Chair Eldridge said she was also in favor of the petition. She noted that the motion was very well put in terms of the mural and signage being like an outdoor museum. She said it was an ongoing project that was very much within the spirit of the ordinance.

*The motion **passed** by a unanimous vote of 5-0.*



### **III. OTHER BUSINESS**

There was no other business.

### **IV. ADJOURNMENT**

The meeting adjourned at 8:30 p.m.

Respectfully submitted,

Joann Breault  
BOA Recording Secretary