

**MINUTES OF THE
BOARD OF ADJUSTMENT MEETING
CONFERENCE ROOM A
MUNICIPAL COMPLEX, 1 JUNKINS AVENUE
PORTSMOUTH, NEW HAMPSHIRE**

7:00 P.M.

March 29, 2023

MEMBERS PRESENT: Phyllis Eldridge, Chair; Beth Margeson, Vice Chair; Paul Mannle; David MacDonald; Jeffrey Mattson

MEMBERS EXCUSED: Thomas Rossi; David Rheame

ALSO PRESENT: Stefanie Casella, Planning Department

Chair Eldridge called the meeting to order at 7:00 P.M. She noted that there were only five board members present. She asked that the rules be suspended to consider the postponements that evening.

*Mr. Mannle moved to **suspend** the rules, seconded by Mr. Mattson. The motion passed unanimously, 5-0.*

*Mr. Mannle moved to **postpone** New Business Item C, 55 Mangrove Street, to the April meeting, noting that the applicant postponed it because there were only five members. Mr. Mattson seconded. The motion passed unanimously, 5-0.*

*Mr. Mannle moved to **postpone** New Business Item D, 74 Sunset Road, to the April meeting for the same reason. Mr. Mattson seconded. The motion passed unanimously, 5-0.*

*Mr. Mannle moved to **postpone** New Business Item F, 196 Aldrich Road, to the April meeting, noting that the applicant needed to do a new survey. Vice-Chair Margeson seconded. The motion passed unanimously, 5-0.*

*Mr. Mannle moved to **postpone** New Business Item I, 15 Lafayette Road, to the April meeting, noting that the applicant postponed it due to a team member not being able to be present. Vice-Chair Margeson seconded. The motion passed unanimously, 5-0.*

*Mr. Mannle moved to **postpone** New Business Item K, 4 Sylvester Street, to the April meeting because there were only five board members present. Vice-Chair Margeson seconded. The motion passed unanimously, 5-0.*

*Mr. Mannle moved to **postpone** New Business Item L, 9 Kent Street, to the April meeting for the same reason. Mr. Mattson seconded. The motion passed unanimously, 5-0.*

I. NEW BUSINESS

- C. **REQUEST TO POSTPONE.** The request of **Michael Knight (Owner)**, for property located at **55 Mangrove Street** whereas relief is needed to replace the existing 6-foot chain link fence with an 8-foot cedar fence which requires the,, following: 1) A Variance from Section 10.515.13 to allow an 8 foot fence on the rear and side lot lines where a 6 foot maximum is allowed. Said property is located on Assessor Map 219 Lot 7 and lies within the Single Residence B (SRB) District. **REQUEST TO POSTPONE (LU-23-15)**

DECISION OF THE BOARD

The petition was **postponed** to the April meeting.

- D. The request of **John T McDonald III and Mary R McDonald (Owners)**, for property located at **74 Sunset Road** whereas relief is needed for an addition of a chimney bump out which requires the following: 1) Variances from Section 10.521 to allow a) a 6.5 foot left yard where 10 feet is required; and b) 26.6% building coverage where 20% is required. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be expanded, reconstructed, or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 153 Lot 14 and lies within the Single Residence B (SRB) District. (LU-22-182)

DECISION OF THE BOARD

The petition was **postponed** to the April meeting.

- E. The request of **Katherine L Cook (Owner)**, for property located at **199 Clinton Street** whereas relief is needed to demolish the existing dwelling and construct a new single-family dwelling which requires the following: 1) Variances from Section 10.521 to allow a) a lot area and lot area per dwelling unit of 4,917 where 7,500 is required for each; b) 54 feet of frontage where 100 feet is required; c) a 4 foot front yard where 15 feet is required; d) a 9 foot right side yard where 10 feet is required; and e) 28% building coverage where 25% is the maximum allowed. Said property is located on Assessor Map 159 Lot 26 and lies within the General Residence A (GRA) District. (LU-23-23)

SPEAKING TO THE PETITION

Attorney Chris Mulligan was present on behalf of the applicant Katherine Cook, who was also present. He said they wanted to demolish the existing single-family residence and replace it with a new single-family residence in the same location. He reviewed the petition, noting that some of the unique aspects of the property were that the building was oriented in such a way that it did not have a front door facing Clinton Street, and a side door opened onto a raised deck close to a lot line and looked over the neighbor's porch. He explained why the setback reliefs were needed. He noted that a structural memo outlining the difficulties in rehabbing the property was previously submitted to

the board. The applicant Ms. Cook said she bought the house with the intention of restoring it but almost everything in it had to be renovated, after which she would still have a lot of problems. She said the architect had convinced her to rebuild the house.

Vice-Chair Margeson asked Ms. Cook when she bought the house and whether it passed the home inspection. Ms. Cook said she bought the house in January 22, 2023 and it passed the home inspection but there were issues with the electric and plumbing and there was some bowing in the front of the house that she didn't know the extent of until after more detailed inspections were done. She said the joists were floating and the house was separating. Mr. Mannle asked whether the foundation would be taken up with the demolition. Ms. Cook said the foundation had to be completely replaced, and if she only renovated the house, it would have to be lifted to replace the foundation, but she would still have issues with the floor joists.

Chair Eldridge opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION OR IN OPPOSITION TO THE PETITION

No one spoke.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Rick Becksted of 1395 Islington Street said his house was built in 1894 and that he had substantial issues but that he renovated the house. He said he was troubled by someone demolishing a home because it was happening more and more in Portsmouth. He said if Ms. Cook put up a new structure, the property would be assessed for over a million dollars, which would have an adverse effect on the surrounding properties because it would raise their assessment values. He said that was the reason Portsmouth was losing so many residents and its character. He asked that the applicant come up with a way to renovate her home.

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

DISCUSSION OF THE BOARD

Mr. Mannle said he lived in an old house and knew the challenges. He said the variance requests weren't that big but thought that tearing down a home put a new dimension on it. He said the foundation concerned him, more so than the frontage, setbacks, and building coverage. He said the applicant knew she was buying into something difficult when she bought the house, especially for the size of the lot. Mr. Mattson said the variance requests stemmed from the very small nonconforming lot, which was under 5,000 square feet and 2,500 square feet less than the minimum required for that zone. He noted that 7,500 square feet was one of the smaller minimal lots in the city, so that was a factor. He said something else he struggled with was the variance criteria of not diminishing the value of surrounding properties. Having been born and raised in Portsmouth, he said he shared concerns of gentrification but noted that the board wasn't there to address that, even though it could fall under the category of potentially harming the public. He said the actual structure

would be a reasonable use and, independent of the board's architectural and aesthetic tastes, would be a single-family dwelling that would not alter the essential character of the neighborhood. He said he'd prefer to see an old house restored, which he did on his own property, but wouldn't impose that on someone else. He said if the house was in the Historic District, it wouldn't be allowed to be demolished and thought that was something to consider.

Vice-Chair Margeson said it was modest in terms of zoning relief and brought the proposed home into more conformance with the zoning ordinance, but one of the purposes and intents of the ordinance was the preservation of historic districts, and buildings and structures of historic or architectural interest, which she took into consideration in terms of whether to raze an 1880s structure. She agreed that the issues with the house were well known when the applicant bought it, which sort of weighed against granting the variances, so she was still undecided.

Mr. MacDonald said the board thought of the status of the property today as the 'before' picture and what the applicant was proposing was the 'after' picture. He said he drove by the property and thought it would be improved from the point of view of the streetscape. He said the cost to get from the 'before' picture to the 'after' picture was an investment and thought there was nothing wrong with that. He said every time a house was demolished in Portsmouth, however, more of Portsmouth was lost, which went in opposition to renovating the property. He said the value of preserving a very tenuous and expensive old house just because it was old didn't make sense from anyone's point of view except the owner's. He said it was a question of what people wanted their city to look like, either an old Colonial look-alike city or a present-day one with present-day amenities and value structures. He said the board's role was to understand which one was the more favorable outcome for everyone and who would win or lose. He said the board had to find a balance. He said he himself lived in an old 1780s house and asked himself why he chose to live in that house instead of one where everything worked. He said it was a judgment for every individual.

DECISION OF THE BOARD

*Mr. MacDonald moved to **grant** the variances as presented and advertised, seconded by Mr. Mattson.*

Mr. MacDonald referred to his comments. He said granting the variances would not be contrary to the public interest, noting that there would be no losers, only winners. He said it would observe the spirit of the ordinance, which was to keep Portsmouth nice and make it a place where people are happy living and raising their families. He said granting the variances would do substantial justice because the applicant and the neighborhood residents would have what people came to Portsmouth for and it would help everyone and hurt no one. He said granting the variances would not diminish the values of surrounding properties because the values would go up. He said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. He said he didn't know if that was a sustainable argument or not, and didn't think the owner, neighbors, or residents would have an unnecessary hardship. He said the owner might experience some difficulty but knew that when she chose to buy the property.

Mr. Mattson said the first two criteria included health, safety, and welfare of the public and that he didn't think granting the variances would be contrary to that. He said the spirit of the ordinance related to the essential character of the neighborhood, and the variances that were all related to the lot size, coverage, and setbacks were the same as the existing footprint. For substantial justice, he said the board had to weigh the benefit to the applicant, which would not be outweighed by any harm to the public because the only potential harm was not only the loss of the structure but how much that truly was harmful to the public vs. the issues associated with the structural issues of the existing building. He said the new home would be code compliant, so granting the variances would not diminish the values of surrounding properties. As for the hardship, he said it was a very small nonconforming lot and the proposal would actually improve the side yard setback and the very minimal changes to the front yard and lot coverage. He said there was no entryway on Clinton Street and that it would be difficult to have one on the front of the existing home. He said it would be a reasonable use because it would still be a single-family dwelling and the purpose of the setbacks would still be met.

Chair Eldridge said she would support the motion because the requests were so small and many of the things that didn't meet the new zoning ordinance were already in place. She said she was on the HDC for ten years and didn't take the demolition of old buildings lightly. She said the applicant's building was old but that she wasn't sure it was a historic structure. Vice-Chair Margeson said the dimensional variance relief was small but the board was seeing more and more petitions like the applicant's. She said the HDC had purview over the architecture of buildings but one of the zoning ordinance's intents was to protect historic structures. Chair Eldridge noted that if the applicant's building was refurbished instead of rebuilt, its value and those of neighboring properties would still be raised, so she didn't see a reason to vote against it.

*The motion **passed** by a vote of 4-1, with Vice-Chair Margeson voting in opposition.*

F. REQUEST TO POSTPONE The request of **Joshua Wyatt and Erin Hichman (Owners)**, for property located at **196 Aldrich Road** whereas relief is needed to demolish existing garage and construct new garage and construct new addition over existing side porch which requires the following: 1) Variances from Section 10.521 to allow a) a secondary front yard of 3 feet where 30 feet is required; b) a 6 foot rear setback where 10 feet 7 inches is required; c) 23% building coverage where 20% is the maximum allowed. 2) A Variance from Section 10.571 to allow and accessory structure to be 10 feet from the front lot line and located in the front yard. 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 153 Lot 25 and lies within the Single Residence B (SRB) District. (LU-23-24) **REQUEST TO POSTPONE**

DECISION OF THE BOARD

The petition was **postponed** to the April meeting.

- G.** The request of **Colmax LLC (Owner)**, for property located at **411 The Hill #6-14 (411 Deer Street)** whereas relief is needed to convert the building into a single-family dwelling which requires the following: 1) A Variance from Section 10.642 to allow residential use on the ground floor in the Downtown Overlay District where is not permitted. 2) a Variance from Section 10.5A41.10A to allow a house in the Downtown Overlay District where it is not permitted. Said property is located on Assessor Map 118 Lot 26-1 and lies within the Character District 4-L1 (CD4-L1) in the downtown Overlay District. (LU-23-21)

SPEAKING TO THE PETITION

The applicant Paul Delisle was present via Zoom. He said the building was used as a mortgage office but that he wanted to allow for a residence on the first floor. He said that making the first floor a residence would make the home a single-family one. He reviewed the criteria, noting that all the buildings across the street were mostly residential and the residential use would help the city's housing shortage. He said residential usage had more value than office space in Portsmouth. He said the hardship was that the ordinance only allowed for an apartment upstairs, which would trigger the building codes for change in use, sprinkler systems, fire walls, a new water line and so on.

Mr. Mannle asked if there was no second floor apartment currently and had never been one, and the applicant agreed. Vice-Chair Margeson asked if the applicant would accept a stipulation that the reasons he was asking for the variance were that the interior features of the building would be preserved. Mr. Delisle agreed, noting that he would have to make some changes to walls added on the second floor that were not historically significant, but the majority would remain the same. Mr. Mattson said the period details were more important than some wall that was built in the 1990s.

Chair Eldridge opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

Paige Trace said she was the president of the New Hampshire Chapter of the National Society of the Colonial Dames of America (NSCDA), who owned the Moffatt-Ladd House and were abutters. She said she would take Mr. Delisle at his word that he would preserve the original fabric of the house that was integral to its period. She agreed that most of the other structures near the house were single-family ones or had residences on the first floor and said all the homes were moved to The Hill because of forward-thinking people during urban renewal.

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

DECISION OF THE BOARD

Vice-Chair Margeson said having a business on the first floor was very explicit in the ordinance because it was the Downtown Overlay District. She noted that the board denied a similar variance in the past and she tried to be consistent. She said she would however support the request because she

thought the property did have special conditions, including that it was across the street from another set of properties that were residential and zoned the same way. She said The Hill presented a special condition in terms of its zoning and that it was created in the 1970s so that buildings could be moved there and preserved. She said there could be conditions placed on the motion, however.

*Vice-Chair Margeson moved to **grant** the variances with the following conditions:*

- 1. The house shall be restored as a single-family home, and*
- 2. The historic features described on pages 3 and 6 of the application and contained in Figures 1 through 5 shall be required from the applicant.*

(**Note:** The seconding of the motion and the stipulations were made at the end of Vice-Chair Margeson's motion).

Vice-Chair Margeson referred to Sections 10.233.21 and .22 of the ordinance and said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. She said the board looked at whether the health, safety and welfare of the public was implicated when finding whether or not something violated the spirit or intent of the ordinance and whether it would change the essential characteristics of the neighborhood. She said the public's health, safety and welfare would not be affected and the essential character of the neighborhood would not change due to the existence of the buildings across the street that were residential and zoned in the same way. Referring to Section 10.233.23 of the ordinance, she said granting the variances would do substantial justice because there would be a benefit to both the applicant and the public, and the benefit to the public would be that a historic building in a historic area will be preserved. Referring to Section 10.233.24, she said granting the variances would not diminish the values of surrounding properties, noting that the board had not received evidence of how the proposal would affect them but thought it was safe to assume that the building's restoration as a single-family home would not diminish surrounding property values. Referring to Section 10.233.25, she said literal enforcement of the ordinance would result in an unnecessary hardship because the property had special conditions that distinguish it from others in the area, and owing to those special conditions a fair and substantial relationship does not exist between the general public purpose of the ordinance's provision and the specific application of that provision to the property, and the proposed use is a reasonable one. She said the property did have special conditions because it was part of a historic area. She said The Hill was created in the 1970s with the purpose of preserving those buildings, and that owing to that special condition, a fair and substantial relationship did exist between having residential or business use on the ground floor. She said the proposed use is a reasonable one because residential use is allowed in this area, at least on the second floor.

Mr. Mannle concurred. He said the variance requests were to allow residential use on the ground floor in the Downtown Overlay District where none were permitted. He said the houses on The Hill were moved there from other places before there even was a Downtown Overlay District, so the rule was created after the houses were in place and preserved to make them nonconforming, which was in itself a hardship. He said the fact that there was a stipulation with no residential on the first floor and residential above would prevent a historic residence from being cut down into a condo or apartment or mixed use, especially if an owner wanted to keep it a historic home and not destroy the

interior. Chair Eldridge said she would support the motion because the hardship was in how special the building was and how it was brought there to be preserved.

*The motion **passed** by unanimous vote, 5-0.*

H. The request of **Mark N. Franklin and Julie S. Franklin (Owners)**, for property located at **168 Lincoln Avenue** whereas relief is needed for demolition of the existing detached garage and porch and construction of a new attached garage and wrap-around porch which requires the following: 1) Variances from Section 10.521 to allow a) a 7.5 foot front yard where 15 feet is required; b) a 9 foot secondary front yard where 15 feet is required; c) 38% building coverage where 25% is the maximum allowed. 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 113 Lot 6 and lies within the General Residence A (GRA) District. (LU-23-25)

SPEAKING TO THE PETITION

Applicant Mark Franklin was present to speak to the petition with his designer Hubert Krah. Mr. Franklin said he wanted the modernization of his 1900s home and the addition to make the home more livable for his family, to work at home, and to have more space for visiting family and medical residents. He reviewed the criteria and said they would be met. Mr. Krah reviewed the redesign aspects by comparing the existing and proposed floor plans.

Vice-Chair Margeson verified that the office was being moved from the ground floor to the second floor. Mr. Franklin said he needed more working space at home but that the office would be no bigger than it currently was. Mr. Krah said one of the bedrooms would also be an office. Mr. Mannle said the board was looking at probably 250 square feet or more for the footprint.

Ms. Eldridge opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

Owner Julie Franklin read a letter from her neighbor Laurie Harrigan of 116 Sherburne Avenue who was an abutter and couldn't attend the meeting. Ms. Harrigan said she was in support of the petition and thought it met all the criteria.

SPEAKING IN OPPOSITION TO THE PETITION

Maxene Feintuch of 180 Lincoln Avenue said she was the direct abutter and would be the most impacted. She said the issues were the proposed home's size, mass, and scale. She said it would be 67 feet long and 33 feet high, which wasn't typical of a house in that neighborhood, and would reduce her light, air, and privacy. She said she submitted a letter to the board from a land realty stating that the project would diminish her property value.

Carol Hollis of 557 Union Street said there must be a hardship, and wanting a larger house was not a hardship. She said the application exceeded the lot coverage required by the ordinance .

Jennifer Benjamin of 180 Sherburne Avenue said the proposed changes did not reflect the other homes in the neighborhood and would set a precedent. She said the neighborhood had a variety of architectural styles with varying rooflines that made the streetscape interesting. She reviewed the dimensions requested by the applicant and said it would be a net gain of over 800 square feet.

Duncan MacCallum of 536 State Street said it was the kind of thing happening in Portsmouth that he didn't like to see. He said the applicant's basis for requesting a variance was that he didn't want to comply with the provisions of the ordinance because he couldn't do what he wanted to do or make the money he could make. He said the hardship was on the land itself and not the owner's personal circumstances. He said the requested relief was substantial.

Dryden Robertson of 139 Sherburne avenue said the project would deprive Ms. Feintuch of her air, light and privacy. She said a similar long home that was built near her friends changed the storm drainage and had flooding problems. She said the city had to be aware of not just beautifying the neighborhoods but what it was doing by paving over more and more of the city.

Steve Scott of 377 Richards Avenue said a doctor, a music teacher, and two children previously lived in the house and he couldn't understand how the need was so great to expand the house. He said the house's proposed mass was completely out of character with the neighborhood.

Paige Trace of 27 Hancock Street compared the applicant's house with hers and said her house was big, whereas the applicant's proposed house would be enormous. She said there were reasons for setbacks and thought there would be health and safety issues.

Ellen Cone of 124 Broad Street said the house was renovated five years ago. She said the abutter would suffer the hardship, not the applicant. She said she was a college professor and had to teach remotely during the pandemic and was able to do it within the footprint of her house.

Esther Kennedy of 41 Pickering Avenue said the zoning was clear and she did not believe that the hardship was met.

Rick Becksted of 1395 Islington Street explained how the proposed addition would block the abutter's light and air.

Jim Lee of Sagamore Avenue said he was a realtor and thought the proposed structure would alter the essential characteristics of the neighborhood and the surrounding property values would be diminished because of the structure's proposed scale. He said he saw no hardship because the house had been a residence for the last 100 years.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Mr. Krah reminded everyone that he was removing a garage that was located too close to two adjoining properties and were increasing the footprint by a little over 300 square feet, of which 180 square feet was the wraparound porch. He said the mid-morning sun would take up some light, but if they removed the porch and barely modified the proposed addition, they would be entirely within the requirements of the ordinance. He said it was the 21st century and a lot has happened since the house was built, like the pandemic and how Portsmouth had changed. He said they would add significant value to the house that would increase surrounding property values.

Petra Huda of 280 South Street said it still came back to the size and the impingement on the neighborhood. She asked the board to look at the criteria but didn't think they would find that the proposal met it.

Jennifer Benjamin clarified that part of the footprint being taken away is a deck with no impact on anyone, which was really the garden space of the property and was infilled with a 3-story addition.

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

DISCUSSION OF THE BOARD

Mr. Mannle said when he first saw the proposal, he was dismayed due to the size but was even more dismayed by the comments made. He said the house had a hardship because it was on a corner lot, but that he wouldn't presume if it fit the applicant's needs or not just because someone lived there before who happened to also be a doctor. He said the lot coverage percentage requested was great, but the square footage was 271 square feet total, which he further discussed. He said the existing house was a 2-story one with an attic and not a 3-story house. He said the applicant was asking for 9-ft setback on the Sherburne Road side and the permitted setback was 15 feet because it was a secondary front yard. He said if there were no other house there, it would be ten feet, so it was a 1-ft request. He said the proposal would also make the rear yard compliant. He said light, air, and so on were concerns, however. He said there were plenty of houses in Portsmouth that had attached two-car garages with something on top of them. He said he could see both sides of the argument.

Mr. Mattson said he acknowledged that the format of the board could be difficult but thought it was the fairest way to deal with quasi-judicial issues. He said he could see the potential of harm to the abutting neighbor on Lincoln Avenue. He said the board had to weigh the benefit to the applicant vs. the one to the public. He said the garage was very close to both property lines and the new addition would come within the setback of the actual structure. He said the variance criteria asked for was really related to the porch in terms of the structure. As far as the coverage, he said it was already nonconforming and would become more nonconforming, and he generally didn't like that. He said the applicant wasn't asking for a height variance. He said he could see that the mass was a factor and was something to weigh because it could have an effect on the public interest and whether it was in the spirit of the ordinance. He said the neighboring lot was almost identical, except that the applicant's lot was a corner one, which was part of the reason for needing a variance. He said the property values criteria was debatable. He said normally he'd think a small lot could be a hardship because the neighborhoods coveted in Portsmouth were all developed before zoning existed, and the newly-applied zoning often made the lots nonconforming, like the applicant's, but

because of the neighbors who would be most affected but had a similar lot made it a challenging decision. Vice-Chair Margeson said she would not support the application. She said the fact that it was a corner lot was already taken into account by giving a secondary front yard. She said it was now at 16.2 feet and the proposed would make it 9 feet. She said even though part of it was the porch, it would make a conforming setback nonconforming. She said the right yard setback, which is the back of the house, would come into compliance but she thought it would be offset by the significant increase in building coverage. She said 38 percent was a very big increase and well over the 25 percent maximum allowed by zoning. As to the impact on surrounding properties, she said there was evidence that the project would impact them, and the board was required to take that into account. She said the letter from the land realtor that was submitted by the nearby abutter was a significant piece of evidence for diminishment of properties. Mr. Mattson said the architect indicated that he could still build the same height structure attached to a new garage and that it could be smaller, so variances wouldn't be needed.

Chair Eldridge said she didn't get all the opposition. She said the addition could be built because it wouldn't be too close to the neighbor's yard or the back or sides. She said it would be tall but it was allowed to be that tall. She said the issue was really the wraparound porch that would go next to the street and affect no one. She said the applicant was asking for very small variances that wouldn't change the streetscape or the front of the house. Mr. Mattson said the front porch was the issue with the setback, and that was on the street side and away from the neighbors. He said the garage would be removed, but that wasn't what the board was granting the variances for. Vice-Chair Margeson said she had no problem with the height because it was under the 35-ft maximum, but the spirit and intent of the ordinance was to prevent overcrowding of lots. She said it would be a big increase in building coverage. It was further discussed.

DECISION OF THE BOARD

*Mr. Macdonald moved to **deny** the request for variances, seconded by Vice-Chair Margeson.*

Mr. MacDonald said granting the variances would be contrary to the public interest. Vice-Chair Margeson concurred. She referred to Section 10.233.22 of the ordinance and said granting the variance would not observe the spirit of the ordinance because the spirit and intent of the ordinance was to avoid overcrowding and overbulking of the lot. She referred to Section 10.233.24 and said granting the variance would diminish the values of surrounding properties, noting that the board had evidence submitted in the form of a letter from a land realtor saying that the proposal would have a negative impact on the abutting property at 180 Lincoln Avenue. For those reasons, she moved to deny the variance as presented and advertised.

*The motion to deny **passed** by a vote of 4-1, with Chair Eldridge voting in opposition.*

- I. **REQUEST TO POSTPONE** The request of **Murdock Living Trust (Owner)**, for property located at **15 Lafayette Road** whereas relief is needed to subdivide one lot into two lots which requires the following: 1) A Variance from Section 10.521 to allow 73.8 feet of continuous street frontage where 100 feet is required for the remainder lot. Said

property is located on Assessor Map 152 Lot 2 and lies within the General Residence A (GRA) and Historic District. **REQUEST TO POSTPONE** (LU-23-26)

DECISION OF THE BOARD

The petition was **postponed** to the April meeting.

- J.** The request of **Seacoast Management Consulting LLC (Owner)**, for property located at **3 Walton Alley** whereas relief is needed to add an AC unit and relocate landing and steps which requires the following: 1) A Variance from Section 10.515.14 to allow a 1 foot side setback where 10 feet is required. 2) A Variance from Section 10.521 to allow a) an 8.5 foot setback where 25 feet is required; and b) 38.5% building coverage where 30% is the maximum allowed. Said property is located on Assessor Map 103 Lot 20 and lies within the General Residence B (GRB) and Historic District. (LU-23-22)

SPEAKING TO THE PETITION

The applicant Lisa Masena was present to review the petition. She said the hardship was the lot size and there was nowhere else to put the AC unit other than the corner because of the stairs and the bulkhead. She reviewed the criteria and noted that the HDC approved it with screening. She said the stairs would be moved to the front of the landing.

Vice-Chair Margeson asked what the current building coverage was. Ms. Casella said it was less than one percent. Mr. Mattson asked if there was currently an AC unit, and Ms. Masena said no. She said the steps and bulkhead were already there. Mr. Mattson noted that the variance was advertised as an 8.5 ft rear yard setback but was actually an 11.5 ft rear yard setback, so the applicant was asking for less relief than advertised.

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 variances with an 11.5 foot rear yard setback, noting that the variance was advertised as an 8.5 ft. rear yard setback but was actually a more conforming 11.5 ft. rear yard setback. Mr. Mannle seconded the motion.*

Referring to Sections 10.233.21 and .22 of the ordinance, Mr. Mattson 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 purpose of the ordinance and would not alter the essential characteristics of the neighborhood nor threaten the public's health, safety, or welfare or

injure public rights. Referring to Section 10.233.23, Mr. Mattson said substantial justice would be done because the benefit to the applicant by adding an AC unit to improve her living conditions would not outweigh any potential harm to the general public. Referring to Section 10.233.24, Mr. Mattson said granting the variances would not diminish the values of surrounding properties because the addition of the AC unit would be a small change and if anything, would improve the value of the applicant's property and not affect surrounding ones. Referring to Section 10.233.25, Mr. Mattson said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. He said the proposed use was a reasonable one and the hardship was due to the small lot size and the location of the existing home and structures that left no other location for the AC unit to be added.

Mr. Mannle concurred and had nothing to add. *The motion passed unanimously, 5-0.*

K. REQUEST TO POSTPONE The request of **Jared J Saulnier (Owner)**, for property located at **4 Sylvester Street** whereas relief is needed to subdivide one lot into two lots which requires the following: Proposed Lot 1: 1) Variances from Section 10.521 to allow a) a lot area and lot area per dwelling of 9,645 square feet where 15,000 is required for each; b) 80 feet of lot depth where 100 feet is required; and c) a 9 foot right side yard where 10 feet is required. Proposed Lot 2: 1) Variances from Section 10.521 to allow a) a lot area and lot area per dwelling unit of 6,421 square feet where 15,000 is required for each; b) 40 feet of street frontage where 100 feet is required; and c) 80 feet of lot depth where 100 feet is required. Said property is located on Assessor Map 232 Lot 36 and lies within the Single Residence B (SRB) District. **REQUEST TO POSTPONE (LU-23-27)**

DECISION OF THE BOARD

The petition was **postponed** to the April meeting.

L. REQUEST TO POSTPONE The request of **Cynthia Austin Smith and Peter (Owners)**, for property located at **9 Kent Street** whereas relief is needed to demolish the existing two-family and construct a single-family dwelling which requires the following: 1) Variances from Section 10.521 to allow a) a lot area and lot area per dwelling of 5,000 square feet where 7,500 square feet is required for each; b) 53% building coverage where 25% is the maximum allowed; c) a 4.5 foot rear yard where 20' is required; d) a 0.5 foot side yard where 10 feet is required; e) a 0 foot front yard where 11 feet is allowed under Section 10.516.10; and f) a 9.5 foot secondary front yard where 13 feet is allowed under Section 10.516.10. 2) A Variance from Section 10.515.14 to allow a 1.5 foot setback for a mechanical unit where 10 feet is required. Said property is located on Assessor Map 113 Lot 42 and lies within the General Residence A (GRA) District. **REQUEST TO POSTPONE (LU-23-28)**

DECISION OF THE BOARD

The petition was **postponed** to the April meeting.

II. OTHER BUSINESS

There was no other business.

III. ADJOURNMENT

The meeting adjourned at 10:00 PM

Respectfully submitted,

Joann Breault
BOA Recording Secretary