

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

7:00 P.M.

October 22, 2024

MEMBERS PRESENT: Phyllis Eldridge, Chair; Beth Margeson, Vice Chair; Thomas Rossi; Paul Mannle; Jeffrey Mattson; Thomas Nies; Jody Record, Alternate

MEMBERS EXCUSED: David Rheume

ALSO PRESENT: Jillian Harris, Planning Department

Chair Eldridge called the meeting to order at 7:00 p.m. Alternate Ms. Record took a voting seat for the evening.

I. OLD BUSINESS

- A.** The request of **Timothy Huntly (Owner)**, for property located at **124 Raleigh Way** whereas relief is needed after the fact for the keeping of chickens which requires the following: 1) Variance from Section 10.440 Use #17.20 to allow the keeping of farm animals where it is not allowed. Said property is located on Assessor Map 212 Lot 49-1 and lies within the General Residence B (GRB) District. (LU-24-140)

SPEAKING TO THE PETITION

[Timestamp 3:45] The owner/applicant Tim Huntley was present and said he was requesting a chicken coop in a fenced-in yard. He said the coop was 3'x5'. He reviewed the criteria. He said the three chickens that were more like pets and that his neighbors enjoyed them. He said the hardship would be having to relocate the chickens to a different home because they were older chickens.

[Timestamp 9:00] Mr. Rossi asked if Mr. Huntley had other farm animals on his property, and Mr. Huntley said he did not. Mr. Rossi said Mr. Huntley had the chickens for 4-1/2 years, and he asked how he found out that he needed a variance. Mr. Huntley said a neighbor complained to Animal Control because she thought the chickens weren't being fed. He said Animal Control and the Health Department inspected the property and did not recommend any changes. Mr. Rossi said the Planning Staff suggested a condition that the coop should be moved to comply with the setbacks. Mr. Huntley agreed. Vice-Chair Margeson asked if Mr. Huntley would get more chickens when the current ones died. Mr. Huntley said he would just maintain the flock he had. Mr. Mattson suggested another condition to the approval that there would be no roosters. Mr. Huntley agreed.

Chair Eldridge opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

Sherry Mitsui of 111 Raleigh Way said she was in favor of the chicken coop because the chickens were well kept, quiet, odor free, and did not adversely affect the neighbors.

SPEAKING IN OPPOSITION OR SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

*Mr. Rossi moved to **grant** the variance for the petition as presented and advertised, seconded by Mr. Mattson, with the following **conditions**:*

- 1) The coop shall be moved to comply with the setbacks;*
- 2) The chickens shall be limited to six chickens; and*
- 3) There shall be no roosters.*

[Timestamp 14:08] Mr. Rossi said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said the spirit of the ordinance was to not combine agricultural enterprise with residential areas, and he said the coop was far from an agricultural enterprise, so he did not think that it violated the spirit of the ordinance to allow the chickens to continue their habitation of the property. He said substantial justice would be done because there would be no benefit to the public by asking the applicant to remove his chickens that would outweigh the hardship or cost to the applicant in removing the chickens. He said granting the variance would not diminish the values of surrounding properties because the chickens were quiet and did not create a nuisance in the area. He said the coop would not be very visible from surrounding properties, so there would be no conceivable impact on the values of surrounding properties. He said literal enforcement of the ordinance would result in an unnecessary hardship. He said the property was bordered by another property owned by the applicant, so there was no violation of the spirit of the ordinance or change in the character of the neighborhood by allowing the chickens and the coop to continue to exist. He said he would add three conditions: 1) that there be no roosters, 2) the chickens would be limited to six, and 3) the coop would be relocated so that they were in compliance with the setbacks required by the zoning ordinance.

Mr. Mattson concurred. He said the coop would not alter the essential character of the neighborhood because it would not be seen from the street due to the fence being as tall as the coop at six feet.

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

II. NEW BUSINESS

- A.** The request of **Eric Benvin and James Christopher Dozier (Owners)**, for property located at **49 Cass Street** whereas relief is needed to construct a two-story addition to the rear of the home which requires the following: 1) Variance from Section 10.521 to a) allow a 3-foot

side setback where 10 feet is required; b) allow a 13.5 foot rear setback where 20 feet is required; and 2) 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 156 Lot 10 and lies within the General Residence C (GRC) District. (LU-24-145)

SPEAKING TO THE PETITION

[Timestamp 18:45] Rock Bisson of Generation Homes was present on behalf of the applicants and said they were seeking an addition for the rear of the house. He reviewed the surrounding context and nonconformities. He said the applicant wanted to extend the property footprint at the rear of the home by adding a 10x'14' two-story addition to accommodate a large kitchen and expand the existing living space above. He said the addition would match the existing home's roofline and design. He reviewed the criteria and said there were letters from the immediate abutters in favor.

[Timestamp 25:32] Mr. Mattson said the condenser was currently in the rear of where the addition would be and asked if it would be pushed back ten feet to be behind the new addition. Mr. Bisson said it would get moved to the inside. Mr. Rossi said the packet included a copy of the warrant deed and asked what its relevance was to the application. Mr. Bisson said it had no relevance to the deed and that he had thought it might be helpful to the process.

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

*Vice-Chair Margeson moved to **grant** the variances for the petition as presented and advertised, seconded by Mr. Mannle.*

[Timestamp 27:36] Vice-Chair Margeson referred to Sections 10.233.21 and .22. She said the applicant was asking for relief from the side yard and rear yard setbacks. She said for the side yard setback, it was a continuation of existing nonconformity and would not impact the lot immediately next to it. As for the rear yard setback, she said it did take the building out of conformity but only by 6.5 feet. She said the light, air, and space aspects would not be implicated negatively by granting the variance and there would be no threat to the public's health, safety or welfare or alteration of the essential character of the neighborhood. Referring to Section 10.233.23, she said granting the variances would do substantial justice because the public would not be harmed by the benefit to the applicant. Referring to Section 10.233.24, she said granting the variances would not diminish the values of surrounding properties because the addition would be an improvement to the existing property and would only enhance the values of surrounding properties. Referring to Section 10.233.25, she said literal enforcement of the provisions of the ordinance would result in an

unnecessary hardship. She said 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's provision and the specific application of that provision. She said the existing bulkhead built right in to the land was a special condition that made expansion off the right side where there is more room impractical. She said the proposed use was a reasonable one, an extension of a living area for a house in the GRC District.

[Timestamp 30:42] Mr. Mannle concurred. He asked if it was possible to add a condition that no mechanical units would be located behind the new addition, noting that the applicant said the current mechanical would be moved to the side. It was further discussed. Ms. Harris said the setback for the mechanicals was 10 feet, so the applicant would still have 3.5 feet.

The motion passed unanimously, 7-0.

- B.** The request of **Aranosian Oil Company INC (Owner)**, for property located at **1166 Greenland Road** requesting relief for the installation of a canopy sign and lightbars which require the following: 1) Variance from Section 10.1251.20 to allow a 44 square foot canopy sign where 20 square feet is allowed; and 2) Variance from Section 10.1252.40 to allow illumination of two existing gas pump canopies. Said property is located on Assessor Map 279 Lot 2 and lies within the Industrial (I) District. (LU-24-171)

SPEAKING TO THE PETITION

[Timestamp 35:31] Peter March of NH Signs was present on behalf of the applicant and said they were requesting a variance for an additional canopy sign size and some additional lighting on the canopy. He said they applied for a sign permit for 44 square feet of signage on one aspect of the canopy and also a light bar and were denied, so they were there to appeal to the Board. He said the square footage on the site was currently 95 square feet and they were asking to increase it to 119 square feet. He said the diesel canopy signage and the carwash signage had been permitted and the subject of the variance request was the gas canopy signage and the light bar on the gas and diesel canopies. He reviewed the requests in more detail and then reviewed the criteria.

[Timestamp 45:00] Vice-Chair Margeson confirmed that the gas station was open 24 hours a day, so the sign would be illuminated 24 hours a day. She asked if there was currently a problem with safety. Mr. March said the site had the potential for attracting 'bad players' on Route 95. He said it was one of the first sites right off the highway for traffic coming southbound on Route 95 and the last site in New Hampshire heading toward Maine, so any lighting would help. He said the blue lighting had a minimal impact on the site's visibility but helped light the base of the canopy. Vice-Chair Margeson said better illumination would attract more people to the site from the highway. She asked if there were other ways to deal with the issue, like lighting on the property or security cameras. Mr. March agreed but said if the site were better lit, it would improve safety for the people using it. Mr. Mattson said the applicant was only allowed 20 square feet for the sign because they were in Sign District 6. He asked if the applicant was allowed only 20 square feet no matter how big the property was. Mr. March said the difference was that it was defined as a canopy sign, and under

that code they were allowed 20 square feet. He said they were asking for the addition of the triangle to help identify the site. Mr. Rossi confirmed that all the lighting would be static and would not have any moving elements.

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

[Timestamp 49:42] Mr. Rossi said the variance request was reasonable because it would not violate the spirit or intent of the ordinance and, particularly because of its location, it would not change the character of the area at all.

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

Mr. Rossi said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He referred to the purpose and intent of the sign ordinance and said the ordinance was trying to avoid distraction to people driving around the roadway, which he did not believe the petition presented. He said there was a benefit to the public because it would be easier to identify the gas station as one came off Route 95 and drove up Greenland Road. He noted that sometimes he had driven right past it and ended up going to the truck stop that had a much larger sign. He said there would be a benefit to the public rather than a hindrance and that it would be well marked, especially at night. He said he agreed with the applicant's statement that having a well-lit fueling area is a comfort to motorists in terms of safety and seeing what's going on around them. He said substantial justice would be done because the public would not suffer a loss by allowing the change of signage. He said it was an area where he did not think the public would be affected at all, other than being able to more easily find and utilize the facilities of this fueling station. He said granting the variances would not diminish the values of surrounding properties because it was a heavily industrialized and commercial area and there would be no conceivable impact on the values of surrounding properties. He said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. He said the special conditions that distinguish it from others in the area were the nature of its location and the proposed signage compared to other gas and refueling signs when people tried to attract business from the highway and tended to stick the signs way up in the air. He said the variance request did not present any of those problems and that the proposal would fit in very well with the location. He said the special condition of the property was that it was surrounded by commercial enterprises and that there was no purpose in restricting the sign with regard to maintaining the character of the neighborhood.

Mr. Mattson concurred. He said the lighting was a secondary factor that would potentially improve safety and would not cause a threat to the public's health, safety, and welfare. He said even if it did

not increase the safety, it certainly wouldn't hurt it. He said the 17-acre property was big and did not have any surroundings that the lighting would be a nuisance to, and the canopy was already there, so not much would be changing. He said the lighting's directionality made sense.

Vice-Chair Margeson said she would not support the motion. She said Article 12 of the ordinance set out very detailed requirements for signs and regulated the type, number, location, size, and illumination to protect the public from hazardous and distractive lighting displays. She thought the variance request was driven more by a corporate rebranding and didn't see that there was a hardship as to why the applicant had to exceed the requirements of the sign ordinance.

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

- C. The request of **Andrew Powell** and **Nicole Ruane (Owners)**, for property located at **339 Miller Avenue** requesting relief to demolish the existing sunroom and construct a two-story addition to the rear of the home which requires the following: 1) Variance from Section 10.521 to allow a building coverage of 28.5% where 25% is allowed. Said property is located on Assessor Map 131 Lot 31 and lies within the General Residence A (GRA) District. (LU-24-175)

Mr. Nies recused himself from the petition.

SPEAKING TO THE PETITION

[Timestamp 56:14] Attorney John Bosen was present on behalf of the applicant and said they wanted a small two-story addition at the rear of the home. He said they would reconstruct the sunroom and that the nook above it would be a small living space. He said they would replace the noncompliant stairs the rear entry of the sunroom with new stairs and a landing area. He reviewed the criteria and said they had a letter of support from the immediate abutter.

The Board had no questions, and 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 variance for the petition as presented and advertised, seconded by Mr. Mattson.*

[Timestamp 1:00:48] Mr. Rossi said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said the spirit of the ordinance with regard to the building lot coverage was to ensure that houses and construction did not result in overcrowding and over massing within neighborhoods. He said it was a de minimus request in

terms of a change from a decimal point request that pushed it from 27.4 to 28.2. He cautioned that it did not mean that future requests of a similar small nature would be easy to get. He said granting the variance would do substantial justice because there would be no loss to the public. He said the addition would not be visible from the street and therefore would have no impact on the public at all. He said granting the variance would not diminish the values of surrounding properties, noting that the addition would be in keeping with the abutting properties and would fit into the neighborhood. He said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. He said in this case, there would be no impact on the character or alteration of the character in the neighborhood because it would continue to be a single residence property, which was what the area was about. Mr. Mattson concurred and had nothing to add.

The motion passed unanimously, 6-0, with Mr. Nies recused.

- D.** The request of **Port Harbor Land LLC (Owner)**, for property located at **0 Deer Street** requesting relief to construct a parking garage associated with a previously approved mixed-use development which requires the following: 1) Variance from Section 10.1114.20 to a) allow a 75 degree angle of parking on the lower level where the parking design standards do not allow it; b) allow a 17.5' one-way drive aisle on the lower level where the parking design standards do not allow it; c) allow a parallel parking space on the upper level with a length of 19 feet where 20 feet is required; and d) allow a 10' one-way drive aisle on the upper level where 14' is required. Said property is located on Assessor Map 118 Lot 28 and lies within the Character District 5 (CD5), Historic and Downtown Overlay Districts. (LU-24-176)

SPEAKING TO THE PETITION

[Timestamp 1:05:31] Attorney John Lyons was present on behalf of the applicant to review the petition. He said the project was initially presented by another owner and the new owner redesigned the project and had all the necessary approvals from the Historic District Commission (HDC) and the Planning Board. He said the project now consisted of three buildings containing 80 residential dwelling units, commercial space, parking, associated community space, landscaping, and other improvements. He said the three separate buildings created some design issues. He said they met all subdivision approvals and deadlines from the Planning Board and received site plan approval and then asked for a one-year extension that was granted but that required them to go before the Technical Advisory Committee (TAC) in October for a work session and that TAC had no concerns. He said the space they were asking for dimensional relief from raised a concern about how the doors opened, so TAC recommended that the BOA approve with the condition that the internal parking design shall be updated to the satisfaction of the Department of Public Works (DPW). He said the variances included a request that the angle on the lower floor be 75 feet due to the way the internal parking was configured. He said they had an engineer's report with more details as to why that made sense. He said they would go from 180 to 186 parking spaces. He further explained why the rest of the variances were necessary. He reviewed the criteria. He noted that there was an easement for Market Wharf 1 Condominiums over the surface lot and that litigation resulted from it because his client moved the spaces across the street from the Sheraton. He said Market Wharf 1 was entitled to 58 parking spots when the project was complete.

[Timestamp 1:15:06] Vice-Chair Margeson said the variance requests were hyper-technical ones. She asked Ms. Harris why the Board had the requirements for the angles. She said she was most interested in the angle of the parking and why the Board had those and the fact that there were others that were considered okay by technical organizations. Ms. Harris said it came from Article 11, the Site Development Standards, and that section outlined the off-street parking requirements. She said she assumed when the City developed that part of the ordinance, they were working off the parking standards that were uniform at that time and picked certain angles that would require certain lengths and distances to make it work.

Attorney Lyons referred to his engineer's report that indicated the level of service work he did to extrapolate the zoning ordinance and apply it to the different angles. He said what they were requesting fit into what the ordinance provided for and was based on who was getting the access.

Chair Eldridge opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

No one spoke.

SPEAKING IN OPPOSITION TO THE PETITION

[Timestamp 1:18:07] Attorney Larry Gormley said he represented the Market Wharf 1 Condominiums adjacent to the Sheraton Hotel. He said they had 58 residential and commercial parking spaces that were deeded to them since 1987. He said the current owner bought the property subject to Attorney Gormley's client's right to park. He said the exchanges with the owner recently were nonproductive. As a result of the litigation, he said the judge suggested to Port Harbor Land that they communicate with his client and tell him what the plan was but he had not heard anything and was still unclear as to how or if it would impact his client as well as where they would be placed in the garage. He said he wasn't familiar with the creation of substandard spaces and the analysis of the Level of Service A through D. He Level Service C was proposed as a result of the changes and thought it would be adequate unless it was his client's space. He said he wanted opportunity to make an informed decision as to how and/or if the proposal would impact his client.

[Timestamp 1:21:44] Vice-Chair Margeson confirmed that it was 58 parking spaces and they were supposed to go into the garage. Attorney Gormley said the spaces could be anywhere on the lot but that the lot would be consumed substantially by the buildings. Mr. Nies asked if it was a residential condominium. Attorney Gormley said they were mixed use. Mr. Mattson asked if Attorney Gormley's concern was that the quality of the parking spots would be decreased by the change as opposed to his client having the spaces at all. Attorney Gormley agreed and said they were the one patron of the parking from which the owner would derive no benefit and that they were concerned that Market Wharf 1 would be given the least convenient parking available.

[Timestamp 1:23:34] Vice-Chair Margeson said it was not within the purview of the Board and that they could not tell the applicant that those spaces would not be part of the easement. Attorney Gormley said he was asking that the Board allow them to determine, if granted, whether the

changes would exact an undue hardship on people that would be parking there. Mr. Rossi asked if it was Attorney Gormley's contention that the proposal would diminish the values of the properties owned by his client. Attorney Gormley agreed. He said they didn't have the information and had not been told where they were going to park and assumed that they would be placed in the most remote parking section, which would impact the condominium. Mr. Mattson asked if Attorney Gormley wanted to continue to hear the application to a future date, and Attorney Gormley agreed.

SPEAKING TO, FOR, OR AGAINST THE PETITION

[Timestamp 1:26:50] Attorney Lyons said his client had the right to move the easement parking that belonged to Attorney Gormley's client. He said that easement parking was on the surface lot outside and that the applicant then moved them into the underground parking at the Sheraton. He said Attorney Gormley's client had been kept up to date with what was happening. He said the applicant went to court and the court agreed that the parking spaces could be moved anywhere they wanted within the garage. He said his client intended to give Attorney Gormley's client their 58 spaces and that they had been provided with all the development plans. He said if his client was granted the variance, the parking provision would improve all of that. He said he didn't know how Attorney Gormley could claim that the value of his client's property would be decreased because they were going from a surface lot to underground parking or parking within the garage. He said the units at Market Wharf 1 were limited to parking for passenger vehicles. He said the court found that the easement terms did not require Port Harbor Land to accommodate oversized vehicles. As per the terms of the easement, he said Port Harbor Land must accommodate Market Wharf's right to 58 parking spaces for autos and other passenger vehicles. He asked the Board to rule on the variance as presented. He said he had provided Attorney Gormley with a complete package.

[Timestamp 1:30:28] Mr. Rossi asked if Attorney Lyons thought the 58 spaces were the same Level of C use or if the people really would not be familiar with the lot. Attorney Lyons agreed and said if the 58 spaces were moved from the underground parking across the street, they would effectively become residents.

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

DISCUSSION OF THE BOARD

[Timestamp 1:32:22] Mr. Rossi said there was an interrelationship between the parking angle and the width of the drive-thru area and that it had to be a wider lane to pass through. He said he didn't think it was a problem as long as the engineers understood it. Mr. Mattson said as the angle was changed more, a wider driving lane could be had but then it would be harder to get out of the space. He said the applicant was ending up with more parking spaces and TAC was in favor of it. Vice-Chair Margeson said she was concerned that the Board got testimony that there may be diminishment of abutter values and that she would be in favor of continuing the petition to the November meeting to give the two sides time to figure out the parking spaces. It was further discussed. Mr. Mannle said he agreed that continuing it would be a good idea. Chair Eldridge said she did not agree. Mr. Mattson said he would be less inclined to continue it because the client was going from surface parking to covered parking, which he didn't think would harm them.

DECISION OF THE BOARD

*Mr. Mattson moved to **grant** the variances as presented and advertised, with the following condition:*

- 1) The internal parking design shall be updated to the satisfaction of the experts at the Department of Public Works.*

Mr. Nies seconded the motion.

[Timestamp 1:38:12] 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 purpose of the ordinance was to have properly created parking spaces and travel lanes, and he noted that TAC indicated that would be achieved. He said the change to the internal parking of the approved parking would not alter the essential character of the neighborhood and would pose no harm to the public's health, safety and welfare. He said granting the variances would do substantial justice. He said the benefit to the applicant should not be outweighed by any harm to the general public or other individuals. He said even though there was some concern about this change proposal, he thought it was a win-win situation by going from surface parking to covered parking. He said granting the variances would not diminish the values of surrounding properties because there was no reason to think that going from a surface parking lot to a building structure that fit the irregularly shaped and located lot would diminish property values, and he thought it would most likely increase them. He said literal enforcement of the ordinance's provisions would result in an unnecessary hardship. He said the special conditions of the property were that it was irregularly shaped, abutted the railroad tracks, and the approved building was shaped uniquely to accommodate the shape of the parcel itself, which resulted in the unusual parking spots that TAC deemed adequate. He said there was no fair and substantial relationship between the general purpose of the ordinance and its provision to the specific application for customized parking. He said the proposed use was a reasonable one because it would end up with more parking spots that would benefit everyone.

Mr. Nies concurred. He said the request that the applicant brought to the Board was related to technical details about the layout of the spaces, and the dispute seemed to focus on where the deeded spaces would be. He said the Board wasn't being asked to rule on whether there may be undesirable spaces in the lot but was being asked to rule on the geometric orientation of the spaces in the lot. He said he understood the desire to have a continuation but didn't know if the two parties could come to an agreement in another month.

Mr. Mannle said he would not support the motion because he thought it was a reasonable request to continue the process on a project that had already been granted two one-year extensions. Vice-Chair Margeson said she would support the motion because the applicant made a good argument about the values of surrounding properties and how the easement holders would not have their values decrease. Mr. Rossi said coming before the Board was not the way to resolve litigation disputes that are not directly related to the specific variances being requested.

*The motion **passed** by a vote of 6-1, with Mr. Mannle voting in opposition.*

III. OTHER BUSINESS

Chair Eldridge asked Mr. Harris if the Board could get the notes from the previous workshop meeting about their concerns. Vice-Chair Margeson requested a marked-up version of the notes with the suggested changes.

IV. ADJOURNMENT

The meeting adjourned at 8:50 p.m.

Submitted,

Joann Breault
BOA Meeting Minutes Taker