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January 8, 2025

Reagan Ruedig, Chair
Portsmouth Historic District Commission
1 Junkins Avenue
Portsmouth, NH 03801

Re: Request for Rehearing – 238 Deer Street

Dear Chair Ruedig and Commissioners:

This letter responds to the request for rehearing filed by Glen Brown for 238 Deer Street. The Historic District Commission made the correct decision at the November 6th Historic District meeting in granting Administrative Approval for 238 Deer Street and the request for rehearing should be denied. This decision is correct for the following reasons listed below.

Since the original approval dated November 10, 2021 for LU-20-238 it was the design team’s intention to locate non-visually appealing condenser units in a location that was hidden from the public view. The design team chose a location that they call the “rear service deck” which was created during the HDC and Zoning Board Approval process to allow for a 4th Floor Penthouse, see LU-20-238. This location was hidden from the public street view which is the view that concerns the Historic District. If you refer to the November 6th Administrative Approval application package you will see photographs and a roof plan of this in effect. This location was also chosen originally for ease of mechanical access directly off of the 4th floor. There was originally 21 condenser units located here which has now been reduced to 15 with the relocation of several condenser units to the main roof. The relocations have been approved through the HDC Administrative Approval process on August 14, 2024 (LUHD-808), and February 20, 2024 (LUHU-727).

Snow stands are a critical part of these pieces of equipment and the Chief Building Inspector, Shanti Wolph, has acknowledged that they are a code requirement. These condensers have already been located in an area outside of the public view and are being screened as was approved. We believe that these units meet the requirements of section 10.633.20(7) of the zoning ordinance. Since these are located off the fourth-floor penthouse this is not the building’s actual roof level, the roof as is technically the level above. The city’s zoning does not define “roof” which in our opinion would mean that this would meet the exemptions of an HDC

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approval per the zoning because these are not greater than 3' above the roof plane. Since we believe this is the case, they do not extend above the roof plane and are each under 27 cubic feet. Therefore, we believe this issue is exempt from the need for a Certificate of Approval and that the Code Official approval is sufficient.

It is our understanding that since the snow stands are code requirements and the Building Inspector has already expressed his intention to approve them being located on snow stands, we should not be required to re-present this to the HDC. We did our due diligence and the courtesy of screening the condensers and locating them at the rear of the building out of the public view as was approved previously. The condensers on the stands will only be higher than the adjacent rail by a matter of inches. During previous Administrative Approvals we noted that the condensers will be on snow stands for the condensers located on the building's actual roof. This was due to our understanding of the zoning ordinance.

Notwithstanding that Commission involvement may not have been required at all, we participated in the November 6 proceedings. The design team stated that snow stands (although not specifically called out in the package) were depicted in the drawings. The design team explained that the increased height was due to a change in the size of condenser units. The original cut sheet found in the November 10th, 2021 submission package was depicted as a basis of design product in Appendix F and was stated as it may potentially change during construction by being labeled "Or Equal". Due to code changes that have happened since the original approval and difference mechanical needs of the building, the condensers have increased by inches as depicted on Sheet A1 in the November 6th, 2024 submission package.

The design team stated that the proposed screening that has been approved during the Historic District Approval process has not been installed yet and will be installed in the coming weeks as presented and approved by the board. The owner of 238 Deer Street, LLC has reached out to the abutter raising this request to allow for the screening to be installed first prior to discussing potential alteration to the screening and sound attenuation as the current approved manner may be acceptable.

The standard of review for administrative approval is set forth in Section 10.633.30 of the Zoning Ordinance and indicates that minor modifications may be made for work which was the subject of a prior Certificate of Approval provided that the Code Official approves and that the Commission deems the modification to be appropriate. The administrative appeals are to be automatically ratified unless the modifications are specifically rejected by the Commission.

While the minutes of the November 6, 2024 meeting are not yet done, a review of the video demonstrates that the Board correctly adhered to their jurisdiction and examined the administrative approval request based on the impact to the public view, and the comments included the following:

“fairly non-public area”

“public sees it less because you cannot get far enough away to see that”

“HDC is more worried about people walking down the street”

“much ado about nothing”

“We don’t manage historic looks from adjacent buildings”

“we don’t owe the abutters any special consideration”

“our purview is to protect the views from the public way.”

In addition, and contrary to comment #6 in the abutter rehearing request, the design team responded to Commissioner Adams question on the timing of construction of 50 Maplewood and 238 Deer Street by stating that 50 Maplewood was under construction during the time period when 238 Deer Street was undergoing the approval process. The timing of the approval process for 238 Deer Street is significant as no objections were raised by abutters at that time as to the location of the condensers at this service deck location.

In conclusion, the rehearing request should be denied. The Commission was presented with an administrative approval request. They considered the request in accordance with procedure and are within the parameters of their jurisdiction which focuses on the public view. No error was made by the Commission, and the rehearing request should be denied.

Very truly yours,

DONAHUE, TUCKER & CIANDELLA, PLLC



Sharon Cuddy Somers

SCS/sac

cc: 238 Deer Street, LLC
Richard Desjardins, AIA
Peter Britz, Planning Director
Peter Stith, Planning Manager