

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

**7:00 P.M.**

**March 15, 2022**

**MEMBERS PRESENT:** Arthur Parrott, Chair; Jim Lee, Vice Chair; David MacDonald, Beth Margeson, Thomas Rossi, Paul Mannle; Alternate Phyllis Eldridge

**MEMBERS EXCUSED:** None.

**ALSO PRESENT:** Peter Stith, Planning Department

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*The appeal of **Duncan McCallum (Attorney for Appellants)**, of the December 16, 2021 decision of the Planning Board for property located at **31 Raynes Avenue, 203 Maplewood Avenue, and 1 Raynes Avenue WILL NOT BE HEARD DUE TO THE STAY ORDER FROM THE SUPERIOR COURT***

Chairman Parrott acknowledged the above appeal will not be heard due to the Court Order.

## **I. APPROVAL OF MINUTES**

A) Approval of the minutes of the meetings of February 15, 2022 and February 23, 2022.

The February 15 minutes were **approved** by unanimous vote as amended. The February 23 minutes were **approved** by unanimous vote as presented.

## **II. OLD BUSINESS**

**A. REQUEST TO POSTPONE** The request of **Francis X. Bruton, (Attorney for Appellants)**, for Appeal of Administrative decision that the merged lot at **1 Congress** is not subject to the height allowances (2 stories, 4th short, 45 feet in height) pursuant to Map 10.5A21B and as permitted pursuant to Section 10.5A21.22(a) & (c) of the Zoning Ordinance. Said property is shown on Assessor Map 117 Lot 14 and lies within Character District 4 (CD-4), Character District 5 (CD-5) and the Historic District  
**REQUEST TO POSTPONE.** (LU-22-12)

## **DECISION OF THE BOARD**

*Ms. Margeson moved to **postpone** the petition to a future meeting, seconded by Vice-Chair Lee.*

Ms. Margeson said the applicant asked for a continuance of the administrative appeal of this matter so that further discussions with the Legal department could occur. She said a continuance was merited. Vice-Chair Lee concurred and had nothing to add.

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

- B. REQUEST TO POSTPONE** The request of **One Market Square LLC (Owner)**, for the property located at **1 Congress Street** whereas relief is needed to construct a 3 story addition with a short 4th story and building height of 44'-11" which requires the following: 1) A Variance from Section 10.5A.43.31 and Map 10.5A21B to allow a 3-story addition with a short 4th and building height of 44'-11" where 2 stories (short 3rd) and 40' is the maximum allowed. Said property is shown on Assessor Map 117 Lot 14 and lies within Character District 4 (CD-4), Character District 5 (CD-5) and the Historic District. **REQUEST TO POSTPONE** (LU-22-12)

### **DECISION OF THE BOARD**

*Vice-Chair Lee moved to **postpone** the petition to the April 6 meeting, and Ms. Eldridge seconded. The motion **passed** by unanimous vote, 7-0.*

### **III. NEW BUSINESS**

- A.** The request of **Kelly Rose Shea (Owner)**, for property located at **725 Colonial Drive** whereas relief was needed to demolish existing garage and construct new 24' x 28' addition with single car garage which requires the following: 1) Variances from Section 10.521 to allow a) a 5.5' right side yard where 10' is required; b) a 20' rear yard where 30' is required; and c) a 20' front yard where 30' is required; and d) 25% building coverage where 20% 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 260 Lot 14 and lies within the Single Residence B (SRB) District. (LU-22-18)

### **SPEAKING TO THE PETITION**

The applicant and co-owner Nick Geist was present to review the petition. He said the project would raise his family's quality of life and the value of his home. He said the abutters were fine with the project and noted that their garages were much closer to the property line than what he was requesting. He reviewed the criteria and said they would be met.

Mr. Mannle asked what the setbacks for the existing garage were. Mr. Geist said they were greater than 10 feet. Mr. Mannle said a variance wasn't needed for that then. Ms. Margeson said the lot was very small compared to the minimum allowed for the SRB District. She said the right yard setback would go from 18 feet to 5.5 feet, which was a significant reduction, and the building coverage would go from 17 percent to 25 percent, where 20 percent was the maximum allowed. She said it was a significant increase on such a small lot. She asked what accounted for

the increase in building coverage in terms of the breezeway, expanded kitchen, and garage. Mr. Geist said they had considered varying the size of the kitchen or the garage but felt that 24'x28 was a good balance. He said the proposed garage would be bigger than the current one.

Mr. Rossi said the setback on one side of the addition was almost at ten feet and that it was just about 10 feet on the other side. He asked if the problem was that the lot was angled and that was why it went down to 5.5 feet. Mr. Geist agreed.

Chairman Parrott opened the public hearing.

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

No one spoke.

**SPEAKING TO, FOR, OR AGAINST THE PETITION**

No one spoke. Chairman Parrott closed the public hearing.

**DECISION OF THE BOARD**

*Mr. Rossi moved to **grant** the variances as presented, and Mr. Mannle seconded.*

Mr. Rossi said he didn't think granting the variances would be contrary to the public interest. He said the spirit of the ordinance was observed because the ordinance is designed in this section to encourage single-family housing, and the project makes the property more suitable for single-family use. He said he didn't see any loss of value or anything for the neighborhood, so he believed that substantial justice is served. He said there are some unusual aspects of the property, notably the angled side yard that make the side yard clearance more difficult to manage than it might ordinarily be on a rectangular lot.

Mr. Mannle concurred. He said the requests were small, even for Panaway Manor where practically every house was nonconforming.

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

- B.** The request of **Christopher S. and Kristin L. Martin (Owners)**, for property located at **27 Sewall Road** whereas relief was needed to construct a rear addition with 2 decks and a 10x10 shed which requires the following: 1) Variances from Section 10.521 to allow a) a 6.5' left side yard where 10' is required; and b) 22% building coverage where 20% is the maximum allowed. Said Property is located on Assessor Map 170 Lot 12 and lies within the Single Residence B (SRB) District. (LU-22-27)

**SPEAKING TO THE PETITION**

The applicant/owner Christopher Martin was present to speak to the petition. He said he is a local builder did a major renovation to the home in 2018, but now he had a growing family and needed more space. He said the addition would allow a kitchen and dining room and would displace the current deck, so he wanted to add a deck on either side. He said the shed was crucial for space needed for mowers, bikes, and so on. He said the relief sought was for the south side yard setback and that he intended to keep the same plane as the existing house. He reviewed the criteria and also noted that all the abutters were in support of the addition.

The Board had no questions. Chairman Parrott opened the public hearing.

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

No one spoke.

#### **SPEAKING TO, FOR, OR AGAINST THE PETITION**

No one spoke. Chairman Parrott closed the public hearing.

#### **DECISION OF THE BOARD**

*Vice-Chair Lee moved to **grant** the variances as presented, seconded by Ms. Margeson.*

Vice-Chair Lee said the request was similar to the previous petition. He said the setbacks were there to insure that there's access to the property from all sides for safety reasons and that decreasing the setback was innocuous. He said the lot area was pretty small and the request for variances was driven by a growing family. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said substantial justice would be done because the benefit to the applicant is not outweighed by any benefit to the general public. He said the well thought-out addition would most likely enhance surrounding properties. He said literal enforcement of the ordinance would result in unnecessary hardship because the family would not be able to meet their need for space for their growing family.

Ms. Margeson concurred. She said the setbacks are put in place for access for emergency vehicles and also for the movement of air and light, which has been deemed important. She said setbacks were not always *de minimis* and, unlike the previous application, she found this application more suitable because the setback diminution on the left side is only 1.5 feet from what it currently is now. She said it's a very large lot and that she felt it could accommodate that. She said the building coverage is two percent over what's allowed by the ordinance, but the existing building coverage is under what's allowed, so she didn't think the variances unduly conflicted with the purpose, spirit and intent of the ordinance, and she would support it.

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

Mr. Margeson was recused from the following petition.

- C. The request of **Nerbonne Family Revocable Trust (Owner)**, for property located **189 Gates Street** whereas relief was needed for conversion of the existing garage into a Garden Cottage with a 12' x 16' addition and 6' x 14' deck which requires the following: 1) Variances from Section 10.521 to allow a) 35.5% building coverage where 30% is the maximum allowed; and b) a 1' right side yard where 10' is the minimum. 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 103 Lot 6 and lies within the General Residence B (GRB) and Historic Districts. (LU-22-30)

### **SPEAKING TO THE PETITION**

The applicant Kelly Sanders and project architect Anne Whitney were present to speak to the petition. Ms. Sanders said she was the owners' daughter and was residing at the house because her father had Alzheimer's and needed supervision. She explained that her parents wanted to age in their home and build a cottage for a caregiver. She noted that the Board had two letters, one from her father's neurologist highlighting how important it was to provide a secure family home environment, and a letter from the president of the Seacoast Village Project that promotes aging in place. She said her parents also did extensive research and planning regarding this next phase of their life by investigating different options and consulting experts.

Ms. Whitney said a revision was made to the project after receiving feedback from the closest abutter, and she handed out copies of the revision to the Board. She said they were now asking for less nonconformity. She noted that she also had an additional abutter's letter. She said there were concerns about how close the addition would be to the property line and also about its size. She said anything added onto the back of the garage would be nonconforming. She said she shifted the addition away from the drop line and downsized it, so they were ending up with a 10.5'x14.5' addition that would push the side setback to four feet instead of one foot. She said they also downsized the deck. She noted that there weren't a lot of options to add other structures to the property because it abutted the Point of Graves cemetery and the existing driveway and yard areas made it difficult and costly to put a structure in the yard. She said the garage was in good condition and that adding a small addition to it made sense for a living space of 500 square feet. She said they were changing the use, so the existing garage's wall would have to be made into a fire wall. She reviewed the current garage's dimensions and said it would not be a very tall addition. She noted that almost all the houses in the area had additions. She reviewed the criteria and noted that the special condition was the nonconformance of the existing garage. She said they also had to obtain a Conditional Use Permit (CUP).

Mr. Macdonald said there seemed to be a lot of public comment, most of it favorable, and he asked if anyone raised objections to the project. Ms. Whitney said the immediate abutter who was the most affected did, even after some negotiations. Mr. Rossi asked how necessary the deck was to the project. Ms. Whitney said it wasn't completely necessary and that the owners were willing to let it go. Mr. Rossi asked if the project would be in conformance with the building coverage if the deck wasn't there. Mr. Stith said it would be 30.8 percent, so one percent over.

Chairman Parrott asked what the deck's revised dimensions were as proposed. Ms. Whitney said it was 6'x13.6' and came in six inches on either side.

Chairman Parrott opened the public hearing.

### **SPEAKING IN FAVOR OF THE PETITION**

Linda McVay of 42 Hunking Street said the neighborhood had a high number of older families and that the biggest concern facing older families was to be able to age in place. She said she had a similar situation in the past. She said the applicant wanted to modify an existing structure that would add value to the surrounding properties and would allow the owners to age in place.

Carol Morin of 170 Mechanic Street said that approving the petition would allow the owners to stay in their home. She said approval was given to a similar house and that there would likely be more. She said the south end was tight and many houses didn't conform to the ordinance.

Peter Morin of 170 Mechanic Street said he and his wife wanted to age in place also and that it was tough to find accommodations to do so. He said he fully supported the petition.

Emily Heffner of 213 Gates Street said she supported the project and thought it would be a great addition to the neighborhood.

Kathleen Beauchamp of 21 Blossom Street said she went through something similar 18 years ago when her husband had a disability and that she'd like to think the City would do everything possible to help people stay in their homes.

### **SPEAKING IN OPPOSITION TO THE PETITION**

Attorney Eric Maher said he represented Devan Quinn and James Butler of 199 Gates Street who were opposed to the project. He said his clients were sympathetic to the need for the conversion and addition, but they believed that it needed to be properly sited and designed and that there were alternatives that would be less adverse to their property. He said his clients made a substantial investment in their property, including \$30,000 to improve their backyard for their children. He said the drainage issues and the proposed addition and garage expansion undermined that investment and their intended use as well as the property's value. He said the requested variance relief should be denied or that the Board should insist that the applicant agree to a continuance so that a more viable and agreeable solution can be worked out. He said his clients tried to contact the owners and was only able to do so on March 7 when they suggested that the application be continued. He said the revision did not match their concern. He said his clients were concerned that the variance requests were not consistent with the spirit of the ordinance or would be contrary to the public interest. He said the lot's topography dropped as one went to the rear and there was also a shelf that dropped it even further, so the existing height of the garage was actually higher on his clients' property. He said extending that by 10 feet meant that the exposed foundation would be well above six feet at the rear portion of the lot and a 10-ft addition would go eighteen feet high, going into his clients' backyard and no further than

four feet from their property line. He said it would diminish their air and light and cause drainage issues. He said the setbacks exist to ensure adequate light and space. He said the lot coverage restrictions exist to ensure that there's enough impervious coverage and a place for the stormwater runoff to go. He said the garage's drip edges are on or over the property line, so his clients were already getting stormwater on their property and the proposal would add an additional amount of surface area coming off the back of the garage and more at the roof, which was pitched toward his clients' property. He said there was no stormwater management proposal and that the drainage issues would be increased. He said garden cottages are supposed to be built within the confines of existing structures and that the ordinance made it clear that only two expansions are permitted without modification from the Planning Board. He said one is a 50ft entrance or up to a 300-s.f. deck. He said the ordinance doesn't allow for a modification to allow for an expansion of the footprint under other circumstances, which was to add a living room onto to an existing garage. He said the proposal was for a detached ADU masquerading as a garden cottage and that the applicant was trying to get around the various restrictions that exist for attached ADUs, one of which is the requirement for them to have a certain amount of lot size. He said the substantial justice test was whether the benefit to be gained by the public in the denial of the variance is outweighed by the loss suffered by the applicant. He said alternatives exist and can be worked out between the two parties. He said the petition as presented would cause his clients significant loss, but because alternatives exist, the denial of the variance would not jeopardize the applicant from submitting something more palatable. He said the assessing card for the property has 3200 square feet of gross space, and 18 of which is living space. He said they had not heard why the existing dwelling could not be expanded with an addition, or why some of the other additional space in the primary dwelling could not be converted to accommodate an attached ADU. He said his clients believed that there would be a significant diminution of property value. He said one appraiser they consulted said he didn't know where he would start valuing the diminution of value because the proposal was so unique. He said the reason why it was so unique is that there are very few detached garden cottages located in such proximity to an existing abutting dwelling. He said it was establishing a separate dwelling on the property that was effectively an outbuilding and that there wasn't a lot of those in the neighborhood, especially so close to abutting properties, and that it will be within ten feet of his clients' home. He said he didn't believe that there were special circumstances to the property to constitute a hardship because almost all the lots in the neighborhood were sub-sized and had restrictions on them. For all those reasons, he said the petition was contrary to the spirit and intent of the ordinance and that other alternatives were available, so it wasn't a reasonable use.

Devan Quinn and James Butler of 199 Gates Street said they had invested in their backyard. Ms. Quinn said the garage sat at the property line and their home was 11 feet from it. She said it would allow less than four feet for their property line and the foundation would add more height onto the building and block their light and air flow. She said the deck would further encroach on the property line and would sit many feet above their yard and look down into their yard. She said the owner could sell the property to someone who could rent the addition as an ADU every weekend to tourists. She said she and her husband suggested other options to the applicant and had hoped the petition could be continued so that further discussions could take place. Attorney Mayer interjected and said he had context photos, which he gave to the Board.

Vice-Chair Lee asked Ms. Quinn which house in the photo was hers, and Ms. Quinn said it was the yellow one. Mr. Mannle said short-term and weekend tourist rentals were only allowed in the Downtown Overlay District.

### **SPEAKING TO, FOR, OR AGAINST THE PETITION**

Joanne Wolfe of 213 Gates Street said she hoped something could be worked out that was satisfactory to everyone and that it didn't divide the neighbors.

Ms. Whitney said they could eliminate the deck. Relating to drainage, she said they could stipulate that they would be guttering both of the gabled ends and directing them to a rain garden or a dry well. She said it wasn't a huge amount of roof to divert. In terms of scale, she said the addition lined up with the edge of the abutter's stairway and there was just a small area of their yard that was directly impacted by light and air. She said the addition requested was pretty small.

No one else spoke, and Chairman Parrott closed the public hearing.

### **DISCUSSION OF THE BOARD**

Mr. Mannle said it was an ongoing ADU application, so the applicant would go before the Planning Board and any additions or modifications were all part of the ADU CUP process as well and the Planning Board could add any stipulations they chose. Mr. Stith agreed.

Vice-Chair Lee spoke to the assertion that there would be a diminution of value in surrounding properties. He said as a real estate broker for 40 years, he could not fathom that adding a small addition to the garage would in any way diminish the value of any of the properties there. Referring to Ms. Quinn's yellow house, he said there was a clear sightline from the Point of Graves cemetery to the backyard and that bumping out the garage ten feet would make more building to look at, but as far as diminishing the value of surrounding properties, he said he didn't think that would happen. Mr. Rossi said he was impressed with the applicant's willingness to be flexible and reach reasonable accommodations with the revised plan. Ms. Eldridge said it seemed that the relief being asked for, particularly with the revised plan, was very small. She said the building coverage was less than one percent over the allowed. She said the four feet was quite a bit less than 10 feet but was a lot more than zero, and the applicant was willing to do away with the deck. She said the height wasn't a problem and that the applicant would be allowed to build something of that height. She said the back addition would go no further than the steps, which would leave a backyard of about 30 feet, so that was a backyard with lots of open air and light, and she didn't see that it would diminish the abutter's ability to use the yard, especially without the deck. She said she was inclined to vote in favor but wasn't completely convinced that there was a hardship or that there wasn't another place to put the addition.

Mr. MacDonald was what was presented to the Board was a picture of conflicting interests. He said one party had a young midlife interest, and the other party had an end-of-life interest. He said he believed that the BOA wasn't ever designed, commissioned, or operated to be the King Solomon who decides between competing interests of that kind. He proposed that the Board not

take a position and force a winner/loser situation but instead require that the parties negotiate and reach a conclusion and then return to the Board. Chairman Parrott said there had to be a motion to postpone for a particular reason, which would be for additional information presented to the Board. Mr. MacDonald said the case and the parties had wound up in a zone that wasn't the purview of the Board. Chairman Parrott said the Board couldn't say that they just didn't want to deal with it.

## **DECISION OF THE BOARD**

*Mr. MacDonald moved to advise the applicant that the petition they presented was not really actionable and that they should withdraw their petition.*

Chairman Parrott said that couldn't be done because the Board had to take a positive action, if it was only to postpone.

*Mr. MacDonald amended his motion and moved to **postpone** a decision until the April 19 meeting so that the parties could bring more information about zoning issues to the Board. Mr. Mannle seconded the motion for discussion.*

Mr. Mannle asked Mr. Stith whether the Board had to have the applicant's permission to postpone the petition. Mr. Stith said the Board could postpone it and request a revised drawing based on the discussions. Chairman Parrott said the Board did it reluctantly but that sometimes it was appropriate. Vice-Chair Lee said he looked at the revised application and thought it met all the criteria, so he would not support the motion to postpone.

*The motion **failed** by a vote of 4-2, with Mr. Mannle, Vice-Chair Lee, Mr. Rossi, and Ms. Eldridge voting against the motion.*

Vice-Chair Lee said when the Board granted a variance or special exception, they were granting it to the property and not to the person. He said he sympathized with the struggles of aging parents, but the Board was granting the relief to the property and it ran in perpetuity. He said the variance would survive long after everyone in the room was gone. He said the revised plan more than met the criteria and that he would move to approve.

*Vice-Chair Lee moved to **grant** the modified addition without the deck, and Ms. Eldridge seconded. (Vice-Chair Lee had no further comments and did not address the criteria).*

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

- D.** The request of **Christopher H. Garrett Revocable Trust of 2007 (Owner)**, for property located at **1299 Islington Street** whereas relief was needed to Subdivide one lot into two lots which requires the following: 1) Variances from Section 10.521 to allow a) a lot area and lot area per dwelling unit of 12,366 square feet where 15,000 is required for each; and b) 99' of continuous street frontage where 100' is required. Said property is located

on Assessor Map 233 Lot 119 and lies within the Single Residence B (SRB) District. (LU-22-33)

### **SPEAKING TO THE PETITION**

Attorney Monica Kaiser was present on behalf of the applicant, along with project engineer Alex Ross. She gave the Board Exhibit E, a list of abutters in support of the proposal, and a revised Exhibit C, a map of the surrounding lots that were nonconforming to frontage or and/or lot size. She noted that 41 percent of the lots on the tax map were nonconforming as to frontage and lot size, and 50 percent were nonconforming to lot size only. Attorney Kaiser reviewed the petition, noting that the owners' family had owned the property since the 1900s but that it was becoming too much for them. She said the left side of the lot was unused and bordered by residential properties except for the back, where there was a railroad bed. She said the owner wanted to create two lots, one for the existing house and was conforming, and the other one, which needed the relief. She reviewed the criteria and said they would be met. She noted that several of the neighbors supported the proposal.

The Board had no questions. Chairman Parrott opened the public hearing.

### **SPEAKING IN FAVOR OF THE PETITION**

Ralph Dibernardo of 1374 Islington Street said there were 19 houses on their block and more than half of them were on lots that had 50 feet of frontage, were 100 feet deep and 500 square feet, as well as some houses on Islington Street that had houses built on lots 50'x100'. He said the exception was a handful of larger lots, which the applicant's lot was one of.

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

No one spoke. Chairman Parrott closed the public hearing.

### **DECISION OF THE BOARD**

*Mr. Rossi moved to **grant** the variance as requested, and Mr. Mannle seconded.*

Mr. Rossi said the core of the motion is that the deviation, in terms of the frontage requirement, is very minor, and in terms of lot area, there is a special condition for the lot. He said there's a little notch taken out of the back of it that borders along the railroad track that really doesn't affect anyone else, but probably takes away just the amount of square footage that will bring this into compliance. On that basis, he said he saw nothing that was contrary to the public interest or to the spirit of the ordinance. He said the proposed use would be in character for the area and for the neighborhood. He said substantial justice would be done because there would be no loss of utility to the public or anyone around the area, and there would be a good gain for the property owner. He said he saw no indication that granting the variance would diminish the value of surrounding properties and probably would enhance them. He said the property's special

condition was its odd shape that made the second lot appear to be somewhat smaller than it otherwise would be.

Mr. Mannle concurred. He said he wasn't an abutter but lived in the neighborhood and thought the variance requests were minimal. He said when the lot was split, the least one will be a conforming lot and the other lot will be slightly under. He said he saw no issue with it.

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

At this point, Chairman Parrott said the Board had a request to switch the order of Petition F, 139 Essex Street and Petition E, 405 South Street.

*Mr. Rossi moved to switch the order of the two petitions, seconded by Ms. Eldridge. The motion **passed** by unanimous vote, 7-0.*

**NOTE:** Petition F, 139 Essex Street, was then heard, and Petition E, 405 South Street, was heard afterwards.

- E.** The request of **Julia R. Tiebout Revocable Trust of 2009 (Owner)**, for the property located at **405 South Street** whereas relief was needed to Subdivide one lot into two lots and construct a single family dwelling which requires the following: 1) Variances from Section 10.521 to allow a) 30' of continuous street frontage where 100' is required for proposed Lot 2: and b) 15.5' rear yard where 20' is the minimum required. Said property is located on Assessor Map 111 Lot 18 and lies within the General Residence A (GRA) district. (LU-22-9)

## **SPEAKING TO THE PETITION**

Attorney Derek Durbin was present on behalf of the applicant, along with the representative from SAI Builders, project engineer John Chagnon, and the owner Julie Robb. Attorney Durbin said the property was unique because it was long and rectangular and had frontage on two streets. He said the home had a garage adjacent to South Street and that most of the property consisted of open land in the back. He said the applicant wanted to subdivide the property into lots of near equal size, with Lot 1 having the existing house and Lot 2 being purchased by SAI Builders to build a single-family home. In order to subdivide the property, he said his client needed a variance due to the lack of street frontage and to construct the proposed home on Lot 2. He said the Board received letters of support from the abutters but would hear opposition related to drainage on the northern portion of the lot and concerns about access. He noted that those issues would go before the Technical Advisory Committee (TAC) and that all the technical issues would be addressed at the Planning Board level. He said his client would improve the drainage conditions on the property, which will benefit surrounding properties including some that drained onto his client's property. He said public access would be improved. He reviewed the criteria in detail and said they would be met. He also noted snow removal issues and said they would be alleviated by moving the garage back a bit. He emphasized that his client could

construct up to three condos on the existing lot if they wanted to and that the value of surrounding property values would increase with the creation of a new single-family home. He gave examples of other nonconforming homes that SAI Builders had renovated in the south end.

Mr. Mannle asked if McNabb Court was a public street all the way to the applicant's property. Attorney Durbin said it was a public street and was recognized as such. He said the plan they were able to get showed McNabb Court extending farther than it does now. Mr. MacDonald asked if there would be an easement for the snow storage. Attorney Durbin said he thought the City would require an easement because there was nowhere else for the snow to go. Mr. MacDonald asked if the City was favorable now. Attorney Durbin said he didn't believe that there were significant concerns expressed at the TAC work session. Mr. Chagnon said TAC was concerned about drainage and protecting the neighborhood, so the team was working on solutions that would not impact the neighborhood. He said TAC made some suggestions and that the team would implement them in the next design phase. He said there was a clear way forward if the drainage issues were dealt with. He said an easement for snow plowing was also discussed. Ms. Margeson said she was familiar with McNabb Court and knew it was very tricky. She said someone could have an oversized driveway and have a provision that they could do a turnaround. Mr. Chagnon agreed. He pointed out a one-car garage and a second parking spot on the plan and said either one would allow turn-arounds and heading out. He noted that there were two spaces that fronted to the street.

Mr. Rossi asked, in regard to the rear yard setback, if the request for a 15.5 setback was necessitated by the garage due to the main body of the house being 20 feet. Attorney Durbin said it was actually 19.4 feet to the back wall of the house in the northern portion of the lot. In response to further questions from Mr. Rossi, Mr. Chagnon said the garage was 22 feet deep and that he was working with the builder to position the house in the best place possible. He said that due to the lot's topography, there was a hill coming off South Street, and the northerly part of the lot acted as the relief point for all the abutting properties, so the properties to the west and north all drained on his client's property. He said they had to consider different options for placing the house due to concerns about snow removal. He said grade changes also required stairways, so having that offset also helped with the layout of the house and the interior stairway. Chairman Parrott noted that one of the architect's drawings showed the garage as 24'x15'. Mr. MacDonald asked if McNabb Court was served by storm drains. Mr. Chagnon said there were currently some located on the portion of McNabb Court before the turn, so the solution would probably be to extend that storm drainage.

Chairman Parrott opened the public hearing.

### **SPEAKING IN FAVOR OF THE PETITION**

Andrew Tiebout was present on behalf of his mother, the owner Julie Robb, and he read a letter that she wrote. Ms. Robb described the property's history and said she was selling the property because she couldn't afford the upkeep or the taxes. She wanted to pass the property on to her son but couldn't do that without selling the other lot. She said she wanted control on what would be built on the lot and was impressed by SAI Builders' architectural styles used on the homes

they built. She said every concern had been addressed by SAI Builders and Ambit Engineering and that the project was tastily designed and situated. She said she would welcome a new family who appreciated the area. She said it was a change but a positive and well-planned one.

### **SPEAKING IN OPPOSITION TO THE PETITION**

Alex and Lauren LePage of 53 McNabb Court said they were direct abutters to 405 South Street. Mr. LePage said the street was barely wide enough two cars. He said they were positive interactions with Ms. Robb but when they asked what her plans were, she said she was redoing the garage and redoing a survey. He said they learned about the proposed house in the fall when holes were being dug and was told to meet with the builder liaison. He said the proposal stated that the applicant took a conscientious approach by engaging surrounding property owners, but it was dishonest because he and his wife were never asked about their concerns and weren't involved in the planning process. He said the proposal was not an addition or tearing down a house but was a new single-family home that was quite larger than the other homes on a dead-end street that was already highly congested. Ms. LePage said a big concern was the request for a 2,500 s.f. home on 30 feet on McNabb Court, where the street was only 21 feet wide, so the applicant was really asking for 24 feet of frontage. She said the logistics of access and egress of another house on McNabb court was a safety concern. She said a four-bedroom house with a garage and driveway would also take away the only two street parking spaces, would cause more people to come and go, would cause concerns for children who walked to school or played in the street, and so on. She said their front door stepped out to where the driveway was planned, so that would be a safety risk. She was also concerned about resale value, how the community interacted with one another, and stormwater runoff. She said the development would affect the water the water they got in their basement, and the driveway's surface area would cause additional water runoff.

Ben Otis of 46 McNabb Court said the street was unique because it was a dead-end, had no sidewalks or curbing, and was very narrow. He said no one could park in front of their house without blocking the street. He said a fifth house on the end of the street would get rid of two parking spaces. He noted that Lincoln and Elwyn Avenues backed up to McNabb court and added to the street's traffic. He said the parking and drainage issues would be big impacts.

Kristen Otis of 46 McNabb Court said the snow was piled against the fence only once, when there was a blizzard, and that it shouldn't be piled there due to the fire hydrant. She said they chose to live on McNabb Court because it was a quiet street that their kids could safely play in. She said adding a home to the end of the street will affect parking and create more traffic.

Ben Lacava of 72 Lincoln Avenue said they owned the property that abutted the north edge of Lot 2 and lived where the water collected. He said the applicant didn't have a strong solution for where the water would go. He said another concern was the neighborhood children's safety because they played in the street. He asked where the construction equipment and trucks would go because a fire truck couldn't even go down the street and that's why there was a fire hydrant.

Alex Greiner of 88 Lincoln Avenue said their driveway was off McNabb Court. He said there was no effort on the applicant's part to reach out to the neighbors about their concerns. He said water runoff was also a concern, as well as safety during the construction phase.

Lucinda Lloyd of 54 McNabb Court said she abutted the applicant's land and worried about the safety of the neighborhood kids, water in the basements, and added traffic. She said the proposed house was bigger than most of the houses on the street and thought there was no way that the applicant would only need a single-car garage.

Ryan Russman of 137 Elwyn Avenue said he had access to his garage on the back side of the applicant's property, which was the actual area being used for the road's egress. He said McNabb Street was plowed using a backhoe and the back end would swing out. He said the way they intended to remove the snow would kill everyone's grass. He said a fire truck wouldn't make the corner. He said the applicant didn't consult the neighbors about the project and there were other alternatives. He said an ingress/egress of 24 feet was an enormous ask and the variances requested were extraordinary.

Nina Herlihy of 60 Lincoln Avenue said she owned the property but lived in Rye. She said she was never contacted about the project and first heard of it when she got the notice about the BOA meeting less than a week before the meeting. She said she also had water problems and that the residents' basements would probably be even more flooded. She said there was no hydrology study and was uncomfortable having a variance passed until there were drainage solutions in place. She said she felt that there had been a lack of transparency with the plan.

Brandon Seppa of 151 Elwyn Avenue said his property abutted McNabb Court on the back and his yard was where the snow was piled. He said he also wasn't consulted and that his primary concern was the neighborhood's kids' safety. He said the neighbors had even discussed placing bollards in the street to slow traffic down. He asked how construction vehicles would turn around when normal delivery trucks could not.

Alex LePage of 53 McNabb Court said he had two letters from abutters who couldn't attend the meeting, one from Patricia Cabrera of 113 Elwyn Avenue and one from Greg and Stephanie Sullivan of 43 McNabb Court. He read each letter, which included concerns about the water table, the proposed house's size and style, additional traffic, less parking, the intensity of land use, and general noncompliance with the ordinance.

### **SPEAKING TO, FOR, OR AGAINST THE PETITION**

Derek Rolfe of 419 South Street said the owner had reached the point where she had no other choice but to sell. He suggested having a third party validate the situations.

Attorney Durbin said as far as access safety, the perception was that the end of McNabb Court couldn't be used, but he said his client had a fence that could be removed to allow access. He said she could construct any kind of driveway access there. He said the Public Works Division wanted to see how the snow was taken in on the left side, which was the reason he was asking

for the rear yard setback. He said those concerns had been addressed and that technical concerns would be addressed proactively. He said they were not eliminating open space but were well exceeding open space requirements.

Patrick Nysten of SAI Builders said when they first started the project, they proposed a house on the northerly portion of the lot, and when they did soil testing there, several abutters came out and voiced drainage and water concerns and the house's siting. He said he listened to those concerns and redesigned the house to be on the southerly side of the lot. He said the lot was 11,000 square feet, one of the largest in the area, and was more compliant than many of the nearby properties in terms of setbacks and lot coverage. He said it would have on-site parking but that his client had a right to park on the street. He said the snow storage was the recommendation of the City and that he would provide an easement if the City asked for it. He said they got nice feedback about how the architect's other houses were integrated into the neighborhood and that the main body of the house was emblematic of the houses on McNabb Court, with similar massing and scale. He noted that they did not put in a two-car garage.

Mr. Chagnon said they were in the process of going before TAC and the Planning Board, which would be robust. He said they would deal with drainage concerns and that the police, fire, and public works departments would weigh in. He said the project would not cause additional burdens to the existing situation in the neighborhood and that the street would still be a dead-end street. He said change was difficult, and adding one more family to the neighborhood would not change the dynamic of the dead-end street. Ms. Margeson asked what the fire department had said so far about the proposal during the preliminary review before TAC. Mr. Chagnon said the fire department did not raise any concerns and didn't say that there needed to be studies of vehicle movement or traffic, nor did they ask for additional firefighting measures. Ms. Margeson said one of the abutters spoke about the frontage actually being 24 feet and some of it being on another property. Mr. Chagnon said the amount of frontage was 30 feet, and what happened was that the public portion on the south side cut very close to the porches, so the 30 feet was the public right-of-way and the 24 feet was the area of pavement that exists within that public right-of-way. He said the driveway extension will be that 24 feet but it didn't mean that there was less than 30 feet of frontage. Ms. Eldridge said another concern was moving construction vehicles back and forth. Mr. Chagnon said it would be a temporary imposition and that they could work with the neighborhood to minimize the impact of construction. He said it would have to be staged appropriately and perhaps small deliveries would be used.

Nina Herlihy of Rye said the builder spoke to the subject property's owners but not the neighbors.

Mr. Nysten said he spoke with Mr. LePage, Lucinda Lloyd, and the gentleman from 88 Lincoln Avenue. He said they came to the property and talked to him and also the project engineer, the property owner, and the construction manager.

Lucinda Lloyd of 54 McNabb Court said no one mentioned that Lots 1 and 2 originate on South Street. She asked why the property couldn't be accessed by South Street. Mr. Chagnon said the

grade change make it difficult to do that and the applicant would have to take out their garage. He said it would require more paved area, which would mean more runoff.

No one else spoke, and Chairman Parrott closed the public hearing.

### **DISCUSSION OF THE BOARD**

Mr. Rossi asked whether the issues of drainage and mitigation were part of the Board's criteria or were issues that TAC would handle. Chairman Parrott said anyone could present to the Board what they wanted and that the Board had to consider everything they heard.

Ms. Margeson said it was a tough application and thought Attorney Durbin did an outstanding job of presenting. She said there were a lot of areas where one could say that the property has special conditions because it's sort of land-locked and is large enough to build on. She said she would not support the application. She thought 30 feet street frontage was probably workable on a street other than McNabb Court. She said she was very familiar with the street and thought it was much too difficult to make such a diminution. She noted that the street frontages on McNabb Court for the four New Englanders also did not meet zoning, but placing 30 feet street frontage in this particular area at the end of this block was just too difficult. She said there were public health, safety, and welfare issues and also an issue with the character of the neighborhood, which was those four little New Englanders. She said she recognized that it was a very unique situation for this lot in the back of the primary lot on South Street, and if there were access off of South Street and perhaps some sort of surface that would not create as much drainage, it might work, but she thought it was just too difficult off of McNabb Street and she could not support the petition. Vice-Chair Lee agreed with Ms. Margeson and said he was a little conflicted on a lot of those points. He referred to his real estate career when he saw a real unique situation and thought, 'Good grief, what were they thinking when they built this.' He said McNabb Court qualified as one of those situations. He said it was a really constricted little neighborhood and the application did not meet all the criteria, so he could not support it either.

### **DECISION OF THE BOARD**

*Ms. Margeson moved to **deny** the petition, based upon the public interest and the spirit of the ordinance prongs of the criteria. Ms. Eldridge seconded.*

Ms. Margeson said the variance relief violates the public interest and the spirit of the ordinance and alters the essential character of the neighborhood, which is essentially the four little New Englanders. She said there were very small lot sizes and very small houses there, and she thought there is a threat to the public's health, safety, and welfare. She noted that the motion to deny only has to identify that one of the criteria is not met. Ms. Eldridge concurred and had nothing to add.

Mr. Mandle said he appreciated the presentation and all the comments for and against the petition. He said the lot was a unique one in Little Harbor, although he could show you a dozen of the exact same lots on Middle Road. He said he knew the property was unique, but turning a

100-ft street frontage down to 70 feet was just too far for him. He said he would support the motion to deny.

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

- F.** The request of **Peggi L. Morrow (Owner)**, for property located at **139 Essex Avenue** whereas relief was needed to demolish existing dwelling and construct new single-family dwelling which requires the following: 1) Variances from Section 10.521 to allow a) lot area and lot area per dwelling unit of 11,581 square feet where 15,000 is required for each; and b) 75' of continuous street frontage where 100' is required. Said property is located on Assessor Map 233 Lot 60 and lies within the Single Residence B (SRB) District. (LU-22-25)

### **SPEAKING TO THE PETITION**

Attorney Derek Durbin was present on behalf of the applicant, along with the Joe Caldarola, who was under contract to purchase the property. Attorney Durbin reviewed the petition, noting that the existing house encroached on the right yard setback by five feet. He said the house was in poor condition and there was no justification to restore it, so they wanted to demolish it and replace it with a small 3-bedroom house. He reviewed the criteria and said the property would be brought into greater conformance and would observe the density goal of the SRB zoning.

The Board had no questions. Chairman Parrott opened the public hearing.

### **SPEAKING IN FAVOR OF THE PETITION**

No one spoke.

### **SPEAKING IN OPPOSITION TO THE PETITION**

Joanne Wolfe of 213 Gates Street said she was present on behalf of her daughter, who lived at 56 Sheffield Street and abutted the property. She said she questioned the plans that were submitted because there was talk of a 2-story, 3 bedroom, and 2-1/2 bath, but the plans showed a 3-story with a balcony in the back and 3-1/2 baths, including a full bath on the third story. She asked what the building was really planning to do.

### **SPEAKING TO, FOR, OR AGAINST THE PETITION**

Joe Caldarola of 70 Dennett Street said the floor plan was the same as the existing house. As to the question of whether the attic gets finished or not, he said when they drew the plans for the lot they decided to finish the attic, so it was actually a 3-1/2 shared bath and the 2-1/2 bath was a misstatement. He said the inset balcony didn't project up or out and that it was inset under the roof, so he would call the house a 2-story New Englander with a finished third floor.

No one else spoke, and Chairman Parrott closed the public hearing.

## DECISION OF THE BOARD

*Vice-Chair Lee moved to **grant** the variances as presented, and Mr. Mannle seconded.*

Vice-Chair Lee said it seemed that demolishing and rebuilding existing homes has become a thing in Portsmouth, and he thought it was a good thing overall because there was a code-compliant house with all the life safety features that some of the older houses didn't have, and having a brand new home in the neighborhood would enhance property values. He said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance because the current house would be demolished and replaced with a new one, with exactly the same floor plan. He noted that it was slightly noncompliant now and will be the same amount of noncompliance when it's completed. He said substantial justice would be done because the benefit to the applicant would not be outweighed by any harm to the general public or other individuals. He said granting the variance would not diminish the values of surrounding properties, and literal enforcement of the ordinance would result in unnecessary hardship to the applicant because he wouldn't be able to complete the purchase and present Portsmouth with a brand new code-compliant house for a nice family to live in. For those reasons, he moved that the application be approved as presented and advertised.

Mr. Mannle concurred and said the structure will be more conforming than it currently is. Ms. Margeson said she echoed what Vice-Chair Lee's comment said about seeing a lot of houses demolished and then reconstructed, which she thought was unfortunate. She said she thought the house was really neat and was sorry to lose it, but it wasn't within the Board's purview, so she would vote for this because she thought the variance request was reasonable and *de minimis*.

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

**NOTE:** The Board then addressed Petition E, 405 South Street.

*At this time, it was moved, seconded, and approved unanimously, 7-0, to **extend** the meeting past 10:00.*

- G.** The request of **Brian A. Fritz (Owner)**, for property located at **169 Martha Terrace** whereas relief was needed to add a second floor on the existing dwelling which requires the following: 1) A Variance from Section 10.521 to allow a) a 37' rear yard where 40' is required; and b) 14% building coverage where 10% is the maximum. 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 283 Lot 9 and lies within the Single Residence A (SRA) district. (LU-22-20)

## SPEAKING TO THE PETITION

Applicant Brian Fitz was present to review the petition. He said the house was a very small ranch and that his growing family needed more room. He noted that his house was the only one in the

neighborhood that didn't have an addition or had gone up in height, and he said the proposed style was the same as other houses in the neighborhood. He reviewed the criteria briefly.

The Board had no questions. Chairman Parrott opened the public hearing.

**SPEAKING IN FAVOR OF OR IN OPPOSITION TO THE PETITION OR  
SPEAKING TO, FOR, OR AGAINST THE PETITION**

No one spoke. Chairman Parrott closed the public hearing.

**DECISION OF THE BOARD**

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

Mr. Rossi said the lot is already noncompliant and the requested variances do not affect that in any way. He said there is no public interest in restricting a second floor, therefore it's not contrary to the public interest to grant the variances. He said granting the variances would observe the spirit of the ordinance because this is a single-family residence area and this project enhances the value of the property for a single-family. He said substantial justice would be done because no one in the area is sacrificing anything for the benefit of the homeowner. He said granting the variances would not diminish the value of surrounding properties, and it would be an unnecessary hardship to require that this lot be brought into conformance in order to add a second floor.

Mr. Mannle concurred and had nothing to add. *The motion **passed** by unanimous vote, 7-0.*

**IV. OTHER BUSINESS**

There was no other business.

**V. ADJOURNMENT**

The meeting was adjourned at 11:10 p.m.

Respectfully submitted,

Joann Breault  
BOA Recording Secretary