

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

7:00 P.M.

March 21, 2023

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

MEMBERS EXCUSED: Thomas Rossi

ALSO PRESENT: Stefanie Casella, Planning Department

Alternate Jeffrey Mattson took a voting seat for the evening.

I. APPROVAL OF MINUTES

A. Approval of the February 22, 2023 minutes

On page 8, in the following sentence “He said anything that would have been done to the house would require a variance, and in this case, what’s being asked for would make it less nonconforming”, the phrase ‘would make it less nonconforming’ was changed to ‘would be less nonconforming’.

On p. 9, the referral to the Planet Fitness Gym was deleted and replaced with the phrase ‘neighboring property’ so that the sentence now reads: “Mr. Bardong said there was no street and that the land went into the backyard of the neighboring property.”

On p. 10, the following sentence: “He said the structures on Lots 140-2 and -4 were two-story ones, and Lot 8 was probably not a buildable lot” was changed to: “He said the structures on Lots 140-2 and -4 were two-story ones, and that portions near the subject property were probably not a buildable lot.”

On p. 11, the referral to the 2025 variance application should be the 2015 variance.

*Mr. Mannle moved to **approve** the minutes as amended, seconded by Mr. Mattson. The motion **passed** by unanimous vote, 6-0.*

B. Approval of the February 28, 2023 minutes

Vice-Chair Margeson abstained from the vote.

*Mr. Mannle moved to **approve** the minutes as presented, seconded by Mr. Mattson. The motion **passed** by unanimous vote, 5-0.*

Chair Eldridge announced that Old Business Item II.B, 635 Sagamore Avenue Development LLC, and New Business Item III.A, 67 Ridges Court were postponed by the applicants.

*Mr. Mannle moved to **suspend** the rules, seconded by Vice-Chair Margeson. The motion **passed** by unanimous vote, 6-0.*

Mr. Rheaume abstained from the vote. *Mr. Mannle moved to **postpone** Item II.B, 635 Sagamore Avenue Development LLC, seconded by Mr. Mattson. The motion **passed** by unanimous vote, 5-0.*

Mr. MacDonald abstained from the vote. *Mr. Mannle moved to **postpone** Item III.A, 67 Ridges Court, seconded by Mr. Mattson. The motion **passed** by unanimous vote, 5-0.*

II. OLD BUSINESS

Mr. Rheaume asked for a formal vote of the board on whether he should recuse himself from the appeal. Three members said he should not. Mr. Mannle and Vice-Chair Margeson said he should.

*Mr. Rheaume moved to **not recuse** himself from the appeal, seconded by Mr. Mattson. The motion **passed** by a vote of 3-2, with Mr. Mannle and Vice-Chair Margeson voting in opposition.*

- A. 1 Raynes Avenue - Appeal** - As ordered by the Superior Court on February 2, 2023, the Board will “determine, in the first instance, whether it has jurisdiction over the issues presented” by Duncan MacCallum (Attorney for the Appellants) in the January 14, 2022 appeal of the December 16, 2021 decision of the Planning Board for property located at **31 Raynes Avenue, 203 Maplewood Avenue, and 1 Raynes Avenue** which granted the following: a) site plan approval b) wetlands conditional use permit; and c) certain other, miscellaneous approvals, including an approval related to valet parking. Said properties are shown on Assessor Map 123 Lot 14, Map 123 Lot 13, Map 123 Lot 12, Map 123 Lot 10 and lie within the Character District 4 (CD4) District, Downtown Overlay District (DOD), Historic District, and the North End Incentive Overlay District. (LU-21-54)

SPEAKING TO THE APPEAL

Attorney Duncan MacCallum representing the appellants was present to see if the board had jurisdiction before the Superior Court over the appeal of the Planning Board’s decision on the following issues: a) site plan approval; b) wetlands CUP; and c) other miscellaneous approvals including valet parking. He reviewed each issue and gave the reasons why the board should or should not entertain an appeal on each issue (recording time stamp 17:27).

Vice-Chair Margeson asked for more information about Attorney MacCallum's count of the recommendation of the Conservation Commission to the Planning Board. Attorney MacCallum said the Conservation Commission's only role was to recommend yea or nay as to whether the Wetlands CUP should be granted, and he thought the ZBA didn't have any business reviewing it. Mr. Mannle said he reviewed the Dec 16, 2021 Conservation Commission meeting and that the vote was a 3-3 tie. Attorney MacCallum said he couldn't remember. Mr. Mannle asked if the HDC had approved it, and Attorney MacCallum agreed. Mr. Rheume asked whether Attorney MacCallum felt that there was nothing in the zoning ordinance that talked to the composition of the Planning Board. Attorney MacCallum said there was the administrative code and the ZBA had the right to administrative appeals, so he thought the board should be entertaining that issue. He said the New Hampshire Legislature would prefer that as many issues as possible be resolved at the ZBA level before burdening the courts with additional issues, but he admitted that it was a borderline issue. Mr. Rheume asked if the Planning Board placed a condition in writing for the valet parking provision that would tie it back to the site plan approval. Attorney MacCallum said the zoning ordinance itself had other provisions pertaining to parking besides parking CUPs and that the ZBA got involved when there are provisions that regulate how much or how little parking there should be. He said the board was in a far better position than the Superior Court in determining whether or not the parking plan opposed by the developers is adequate and thought it was a much stronger case for jurisdiction than whether a Planning Board member was ineligible for voting. Vice-Chair Margeson asked if the HDC approval changed the site plan on the project. Attorney MacCallum said he didn't remember and thought it was last December of early January since they granted the approval. Vice-Chair Margeson said if the site plan changed, it would have to go back to the Planning Board for an amended site plan approval. Planning Director Peter Britz was present and said the site plan approval was not changed by the HDC decision.

Attorney Courtney Herz was present on behalf of the project applicant and said the only issue before the board was whether it had jurisdiction over the appeal of the Planning Board decision. She said the board received a memo from City Attorney McCourt informing them about the laws governing the question, which she said were laid out in Statute RSA 6765. She said that only questions involving the construction, interpretation, or application of the zoning ordinance were properly within the board's jurisdiction, and any claims outside of those parameters should be dismissed. She said appeals of CUPs must go directly to Superior Court. She noted that Attorney MacCallum didn't state one single provision of the zoning ordinance that he claimed had been violated by the Planning Board decision. She reviewed each issue and the reasons why the board had no jurisdiction over them (recording time stamp 39:07).

Mr. Mannle asked if the project received approval from the Conservation Commission. Attorney Herz said it was a tie vote. Mr. Mannle asked Attorney Herz if she agreed that if a board is not constituted according to the State RSA, then the decisions of that board are at least questionable if not invalid. Attorney Herz said it was a broad question but what mattered was that it was before the board and that it was up to the board to decide whether issues appealed were within their jurisdiction. She said the statute was explicit in what the board could consider and that there were other forums for arguments to be heard.

Vice-Chair Margeson said it was the first time the board was hearing the appeal. She said she felt that the parking was undeveloped by Attorney MacCallum's letter and also thought the Planning Board rushed that issue at the end. She said it was difficult to figure out what the board was supposed to be reviewing on the valet parking issue. Attorney Herz said the board had to be governed by the appeal that was filed and all it said about parking was that there were some unanswered questions about valet parking and whether there was an adequate amount of parking, which clearly fell within the ordinance's parking CUP. Vice-Chair Margeson said it could be part of site plan approval, which was appealable to the board. Attorney Herz said it would be only if it touched on the zoning ordinance and not a CUP issue.

DISCUSSION OF THE BOARD

Mr. Mattson said he didn't think the board had jurisdiction. He said the key issue was the parking and finding out that the HDC didn't change the site plan. Vice-Chair Margeson suggested that the board decide on each of the grounds and make their findings to the court and that they go through the January 14 appeal letter.

Vice-Chair Margeson referenced page 32 of the packet and the January 14 letter from Attorney MacCallum. She said the grounds of appeal were paragraphs 1 through 8 that dealt with the ineligibility of Raymond Pezzullo as a member of the Planning Board. She said it was clearly a conflict between the RSA and the city ordinance whether or not that triggered Winslow v. Holderness and made that vote ineligible. She said she did not believe it was in the board's purview to decide. Mr. Mattson said he saw no conflict of interest on the Planning Board's vote but didn't see it as being under the ZBA's jurisdiction. Mr. Rheume asked if there was something in the zoning ordinance that would affect the composition of the board and who should be on it. He said he didn't see anything in the applicant's or the appellant's discussion that indicated that they cited anything specific to the zoning ordinance. He said he couldn't find anything in the zoning board that was tied to it and thought it wasn't something that the zoning ordinance should be reviewing. Mr. Mannle agreed and said the composition of the Planning Board had been in question for a number of years. He said he would look at the State RSAs vs. how the Planning Board is made up.

Vice-Chair Margeson moved that the ZBA has no jurisdiction over the complaints in paragraphs 1 through 7 regarding the composition of Board members as stated in the January 14 appeal letter by Attorney MacCallum. Mr. Mattson seconded.

Vice-Chair Margeson referred to her comments and said she thought there was a conflict, and that the issue of whether or not it triggered and fit into the Winslow vs. Holderness was a matter for the Superior Court to deal with.

*The motion **passed** by a unanimous vote of 6-0.*

*Mr. Mattson moved that the Zoning Board of Adjustment has no jurisdiction over the complaints in paragraphs 8 through 10 regarding Wetland Conditional Use Permits as stated in the January 14 appeal letter by Attorney MacCallum. Mr. Rheume seconded. The motion **passed** by a unanimous vote of 6-0.*

Vice-Chair Margeson said she didn't know if the parking outside of the CUP actually tied into the site plan approval, which would be appealable to the board. She said she thought it was the appellants' responsibility to plead that out but also thought the Planning Board did not do a good job on it. Mr. Mannle said he thought the whole application was rushed, considering that the Planning Board was still waiting for HDC and Conservation Commission approvals. He said the parking was appealable to the ZBA and didn't think anything wrong was done as far as applying the ordinance in place, except for how Planning Board members rushed through the process or gave misinformation to sway other members. Mr. Mattson said he shared some of Mr. Mannle's concerns but he was concerned that the burden would be on the appellant and there were no provisions mentioned in the ordinance regarding the parking, independent from the CUP which the ZBA didn't have purview over. Mr. Rheume cautioned that the board's responsibility was whether they had jurisdiction over it and not a decision on the merits or demerits of what the Planning Board actually did. He said nothing in the zoning ordinance talked to the necessity of one board waiting for another board's decision. He said the valet parking was the most questionable aspect of the discussion in terms of something that could be appealable to the ZBA. He asked if the Planning Board wandered into territory that was starting to affect other areas of the zoning ordinance and might have had to come back to the ZBA because it wasn't completely covered by the ordinance. He referred to the part in the ordinance that says the board may "accept, modify, or reject the applicant's findings of the parking demand analysis." Mr. Rheume said the word 'modify' would open the door up for the Planning Board to say they were either in keeping with the concept of the CUP and therefore making it something the ZBA would not be reviewing or they were wandering outside of that. He said it was something the board needed to figure out. Chair Eldridge said she felt that the parking was the stickiest issue but the main feature was the valet parking and who would pay for it and whether there were enough parking spots. Mr. Mattson referred to Paragraph 11 and said the HDC did not make any changes to the site plan regarding parking.

Ms. Margeson moved that the Zoning Board of Adjustment has no jurisdiction over the complaints in paragraph 11 regarding the Historic District Commission as stated in the January 14 appeal letter by Attorney MacCallum. Mr. Mattson seconded. The motion passed by a vote of 5-1, with Mr. Mannle voting in opposition.

Mr. Mattson moved that the Zoning Board of Adjustment has no jurisdiction over the complaints in paragraph 11 regarding parking as stated in the January 14 appeal letter by Attorney MacCallum. Mr. Rheume seconded for discussion.

Mr. Rheume said he was torn and felt that the word 'modify' was the only word in the zoning ordinance that may give the Planning Board an out and put it under the cognizance of the CUP. He said the key was in saying it didn't apply and was something the ZBA didn't need to review because it was within the overall purview that the Planning Board would have in regard to a CUP. He said the board could accept, modify, or reject the findings of the applicants' parking demand analysis but thought the word 'modify' got the applicant off the hook and that the board would not have jurisdiction over it because it was covered by the umbrella of the CUP. Mr. Mattson said anything regarding CUPs automatically went to Superior Court, so the parking would be independent of the CUP for parking. It was further discussed.

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

The board reviewed Paragraph 12, Conservation Law Foundation, next. Vice-Chair Margeson said she thought the Conservation Law Foundation was misquoted and influenced other members of the Planning Board but didn't think it was in the ZBA's purview. Mr. Mattson agreed. Mr. Rheume said the paragraph pointed toward the Wetlands CUP, so in that sense it would not be covered. He said nothing talked to a specific paragraph of the zoning ordinance.

Mr. Mattson moved that the Zoning Board of Adjustment has no jurisdiction over the complaints in paragraph 12 regarding the Conservation Law Foundation as stated in the January 14 appeal letter by Attorney MacCallum. Mr. MacDonald seconded.

*The motion **passed** by a unanimous vote of 6-0.*

The board reviewed the Conservation Commission Question, Paragraph 13. Mr. Rheume said there was nothing in the zoning ordinance that binds the Planning Board to uphold a recommendation from another board, so it was nothing under the ZBA's purview. Mr. Mattson noted that it was a 3-3 tied vote. Chair Eldridge said it failed to pass. Mr. Mattson said it would relate to the CUP and the lack of a specific provision of the zoning ordinance not being stated.

Mr. Mattson moved that the Zoning Board of Adjustment has no jurisdiction over the complaints in paragraph 13 regarding the Conservation Commission as stated in the January 14 appeal letter by Attorney MacCallum. Mr. Rheume seconded.

*The motion **passed** by a unanimous vote of 6-0.*

- B.** The request of **635 Sagamore Development LLC (Owner)**, for property located at **635 Sagamore Avenue** whereas relief is needed to remove existing structures and construct 4 single family dwellings which requires the following: 1) A Variance from Section 10.513 to allow four free-standing dwellings where one is permitted. 2) A Variance from Section 10.521 to allow a lot area per dwelling unit of 21,198 square feet per dwelling where 43,560 square feet is required. Said property is located on Assessor Map 222 Lot 19 and lies within the Single Residence A (SRA) District. (LU-22-209)

DECISION OF THE BOARD

Mr. Rheume abstained from the vote.

*The Board moved to grant the request to **postpone** consideration to the April meeting by a vote of 5-0.*

- C.** The request of **Nissley LLC (Owner)**, for property located at **915 Sagamore Avenue** whereas relief is needed to demolish the existing building and construct new

mixed-use building which requires the following: 1) A Variance from Section 10.440 to allow a mixed-use building where residential and office uses are not permitted. 2) A Variance from Section 10.1113.20 to allow parking to be located in the front yard and in front of the principal building. 3) A Variance from Section 10.1114.31 to allow 2 driveways on a lot where only one is allowed. Said property is located on Assessor Map 223 Lot 31 and lies within the Waterfront Business (WB) District. (LU-22-229)

Note: this was not a public hearing. The public hearing was previously closed.

Mr. Rheume said the application was a request to construct a mixed-use building, including residential and offices, in the Waterfront Business District (WBD) where those uses are not allowed. He said the applicant noted that a property directly across from Sagamore Creek was used for office space, but Mr. Rheume said it was really in the Mixed-Residential Office District and was allowed. He said the applicant talked about the feasibility of using the waterfront and the fact that the waterfront was minimal, which negatively affected their ability to meet the expectations of the WBD. Mr. Rheume said there were a few uses allowed in the WBD but the city was trying to preserve some aspect of Portsmouth's marine heritage, so there were some options that didn't require water space at all. He said the WBD did include several parcels of mostly residential uses, but one of the options was marine-related research and development that didn't require waterfront space. He said what was proposed was very generic and was better suited for the Gateway District and that there were a lot of other places the business could go. He said what was proposed failed on being in keeping with the spirit of the ordinance and the hardship argument.

Vice-Chair Margeson said she watched the presentation and deliberations and thought the project had some benefit but didn't meet the spirit of the ordinance. She said she didn't support it the first time and wouldn't support it now. In terms of hardship, she said the business allowed for the sale of marine goods, groceries, and so on, which was a use variance but would be like rezoning the property to mixed-residential business. She said the applicant proposed 12 work units, but the purpose of a mixed-residential business was to provide a transition from commercial to residential. She said she didn't really see any commercial properties there and didn't think it fit the spirit and intent of the Mixed Residential-Business District. She was also concerned about the density. She said the property was asking for 12 units, but the highest amount allowed was eight. Mr. Mattson agreed. He said the density was almost hidden by the fact that the WBD didn't have any criteria regarding density and the preciousness of the waterfront. He said he thought, however, that the property was underutilized and suggested stipulations requiring that one or more offices be used for waterfront purposes and that the proposed density be reduced. Chair Eldridge said it was like a little desert in the middle of residences and said there were many uses for waterfront businesses that didn't require a lot of water, but she thought that because of the rezoning and the density suggested, she could not support the application. Mr. Mattson said something would happen to the property if it wasn't dealt with now, so the stipulations would help move it along. Mr. Rheume said he thought there were some possibilities and didn't think the applicant, with its heavy emphasis on other uses, made a real attempt to honor the WBD. He said it didn't meet the board's criteria and that the applicant was also asking to negate the existing conforming use.

DECISION OF THE BOARD

*Mr. Rheaume moved to **deny** the request, as it failed to meet the criteria set forth in 10.233.22 because the proposal did not demonstrate that removing the use of a waterfront business would be in keeping with the spirit of the ordinance; and it failed to meet criteria set forth in 10.233.25 because the proposal did not demonstrate enough of a hardship to prove the property was unique to others in the Waterfront Business District. Mr. Mannle seconded the motion.*

*The motion to deny **passed** by a unanimous vote of 6-0.*

- D. The request of The Griffin Family Corporation (Owners), and LoveWell Veterinary Services, LLC (Applicant), for property located at 738 Islington Street, Unit 1B (previously advertised as 800 Islington Unit 1B) whereas relief is needed to allow a veterinary clinic which requires the following: 1) Special Exception from Section 10.440, Use #7.50 to allow a veterinary clinic where the use is permitted by Special Exception. Said property is located on Assessor Map 155 Lot 13 (previously advertised as Assessor Map 154 Lot 1) and lies within the Character District 4-W (CD4-W) District. (LU-23-8)**

SPEAKING TO THE PETITION

Attorney Tim Phoenix was present on behalf of the applicant. He said they previously got approved for a special exception but then the owner couldn't work out the lease arrangements, so they were back for an identical request but a different location. He said nothing in the proposal had changed except for the location. He reviewed the special exception criteria.

Mr. Rheaume said the zoning ordinance definition didn't limit the property to small animals and the special exception would run with the land in the future. He suggested a stipulation that the special exception be granted for the care of dogs, cats, and similar other animals, with the largest animal being a dog. Attorney Phoenix said that would be acceptable.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one was present to speak, and Chair Eldridge closed the public hearing.

DECISION OF THE BOARD

*Mr. Rheaume moved to **grant** the special exception with the following **condition**:*

- 1. Clinic treatment is limited to dogs, cats, and other small animals.*

Mr. Mannle seconded.

Mr. Rheume said the approval ran with the land and the way it was all set up was all allowed by special exception, so it met the criteria of Section 10.232.21. He said granting the special exception would meet Section 10.232.22 and would pose no hazard to the public or adjacent properties on account of the potential of fire, explosion or release of toxic materials. He said a veterinary practice was very limited in those areas and any toxic materials would be extremely limited in nature. He said granting the special exception would meet Section 10.232.23 because it would pose no detriment to property values in the vicinity or change in the essential character of the area like odors, smoke, dust, other pollutants, gas, noise, glare, heat vibration, unsightly storage of equipment, and so on. Referring to Section 10.232.24, he said there would be no creation of a traffic safety hazard or potential increase in the level of traffic congestion in the vicinity, noting that there were a number of parking lots nearby but the small size of the unit was minimal compared to the other uses around it. He said there were some parking challenges but the applicant would not significantly add to them. Referring to Section 10.232.25, he said granting the special exception would pose no excessive demand on municipal services including but not limited to water, sewer, waste disposal, police and fire protection, schools, and so on. He said it was a veterinary clinic that would not create any significant impact on those services. He said there would be no increase of stormwater runoff onto adjacent properties or streets, noting that the existing property performed satisfactorily in those areas. Mr. Mannle concurred and had nothing to add.

The motion passed by a unanimous vote of 6-0.

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

SPEAKING TO THE PETITION

Attorney John Bosen was present on behalf of the applicant and introduced the project team Eben Tormey, John Stebbins, and Neil Hansen. He said the parcel was currently vacant and they wanted to develop it for an advanced manufacturing facility. He noted that the project received a variance on November 15 to allow a 51-ft front yard setback but then the applicant became aware of a setback problem with the utilities, so they met with the Pease Development Authority (PDA) in January and got recommendation for a rear yard setback of 28.4 feet. Attorney Bosen reviewed the PDA criteria and said they would be met.

Mr. Rheume said Attorney Bosen said the wetlands would be compromised if the building were pushed back further to accommodate the setbacks. He asked exactly where the wetlands were and why they affected the positioning of the building. Mr. Hansen said the wetlands were on the opposite side of the street and that a previous concept of the building was longer and narrower, which pushed the parking closer to the right-of-way line on their side of the property and was getting near the wetland buffer and required some reconfiguration of the street. He said they would

avoid the wetland buffer by leaving the road where it was. He said the road was wider than the typical road, which was part of the hardship. Mr. Rheume asked for examples of surrounding properties that were commercial in nature and had similar setbacks. Attorney Bosen said the property across the street, Seacoast Media Group, had a similar setback. Mr. Rheume asked why the 2:1 ratio for the building was important. Attorney Bosen said the proposed building had to have a certain column width and depth that drove its proportions. Mr. Rheume said the 2:1 ratio could still be met with a smaller structure, and it was further discussed. Attorney Bosen said the building had to be a certain size for it to function as an advanced manufacturing facility.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

*Mr. Mattson moved to **recommend approval** to the PDA, seconded by Mr. Mannle.*

Mr. Mattson said there would be no adverse effect or diminution of values of surrounding properties and that the project would be a benefit to the public interest. He noted that the lot was currently vacant and would be developed for an advanced manufacturing facility that would bring productive and good-paying jobs. He said denial of the variance would result in unnecessary hardship to the person seeking it. He noted that the petition went through the Technical Advisory Committee (TAC) and due to the wetlands, wetlands buffers, large right-of-way and utilities on the street, it resulted in pushing the building back and now required the variance. He said granting the variance would do substantial justice. He said the hardship by denying the variance would not be outweighed by any benefit to the public. He said the proposed use would not be contrary to the spirit of the zoning rule because the parcel was in the industrial zone and manufacturing use was permitted.

Mr. Mannle concurred and had nothing to add. Mr. Rheume said he would support the motion, although he found the applicant's argument wanting in several areas and thought some of the logic was not supported by the facts of the case, which he further explained.

*The motion **passed** by a unanimous vote of 6-0*

III. NEW BUSINESS

- A. The rehearing of the request of **Jeffrey M. and Melissa Foy (Owners)**, for property located at **67 Ridges Court** whereas relief is needed for construction of a 518 square foot garage addition and expansion of front dormer which requires the following: 1) A variance from Section 10.521 to allow a 14 foot front yard where 19 feet is required per Section 10.516.10. 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 207 Lot 59 and lies within the Single Residence B (SRB) District. (LU-22-199)

DECISION OF THE BOARD

Mr. MacDonald recused himself from the vote.

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

- B.** The request of **William Camarda (Owner)**, for property located at **809 State Street** whereas relief is needed to Extend the existing deck which requires the following: 1) Variances from Section 10.521 to allow a) a 10 foot rear yard where 20 feet is required; and b) 46% building coverage where 35% 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 145 Lot 11 and lies within the General Residence C (GRC) District. (LU-23-6)

SPEAKING TO THE PETITION

The applicant William Camarda was present and said he wanted to extend the shallow deck toward the side of the house for more room. He reviewed the criteria and said they would be met.

Mr. Mannle asked what the deck's current width was. Mr. Camarda said it was 8'4" deep from the house and he wanted to make it 12 feet. Mr. Rheume asked what the basis was for the 10-ft clearance. Mr. Camarda said the fence was the property line and he wanted to extend the deck 10 feet away from that fence. Mr. Rheume said the Staff Memo noted that the current setback from the back property line was two feet for all of the structures, and he asked if Mr. Camarda's house was really set back two feet and the current deck set back two feet from the fence line and whether Mr. Camarda was sure about the 10-ft dimension. Mr. Camarda said he measured it and was almost positive. In response to Mr. Mattson's questions, Mr. Camarda said the stairs would not be changed and would ask his contractor if covering the green pipe coming out of the ground would work.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and she closed the public hearing.

DECISION OF THE BOARD

*Mr. Mannle moved to **grant** the variance as presented and advertised, seconded by Mr. Mattson.*

Mr. Mannle said it was a minimal request for a deck and the 10 feet didn't bother him but the building coverage did bother him, but not for that area of town because he'd be surprised if anyone on State Street was at 35 percent or below. He said granting the variance would not be contrary to the public interest, noting that no one was present to speak against the petition. He said it would observe the spirit of the ordinance because outside space was important, especially for a young family. He said it would do substantial justice and that it wouldn't diminish the values of surrounding properties but would enhance them as well as the applicant's property. He said literal enforcement of the provisions of the ordinance would result in unnecessary hardship because not granting the variance would present a hardship to the applicant. He noted that the neighborhood was the more dense area of State Street. For those reasons, he said the petition should be approved. Mr. Mattson concurred. He said the deck portion will be less nonconforming than the existing house structure in that portion of the stairs, and the small increase of building coverage from 42 to 46 percent wasn't a big ask. He noted that normally a deck addition went closer to the rear but the applicant's was going towards the side and more to the inner portion of the parcel. Mr. Rheume added that the key factor was that the deck was moving toward the center of the lot and would not impact the surrounding neighbors or be perceived by anyone passing by.

*The motion **passed** by a unanimous vote of 6-0.*

IV. OTHER BUSINESS

There was no other business.

V. ADJOURNMENT

The meeting adjourned at 9:42 p.m.

Respectfully submitted,

Joann Breault
BOA Recording Secretary