

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

**7:00 P.M.**

**August 15, 2023**

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

**MEMBERS EXCUSED:** ML Geffert, Alternate

**ALSO PRESENT:** Stefanie Casella, Planning Department

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Chair Eldridge called the meeting to order at 7:00 p.m. Alternate Ms. Record took a voting seat for the entire meeting. Chair Eldridge noted the petitions that would be heard at the August 22 meeting.

*Mr. Mannle moved to **suspend** the rules in order to address the request for postponement for New Business, Petition F, 30 Parker Street. Ms. Record seconded. The motion **passed** unanimously, 7-0.*

*Mr. Mannle moved to **postpone** Petition F, 30 Parker Street, to the September 6 meeting, seconded by Mr. Rossi. The motion **passed** unanimously, 7-0.*

## **I. APPROVAL OF MINUTES**

### **A. Approval of the July 18, 2023 minutes.**

Vice-Chair Margeson abstained from the vote. *Mr. Mannle moved to **approve** the July 18 minutes, seconded by Mr. Rossi.*

Mr. Rheaume noted a few corrections: 1) the vote on page one to appoint a temporary chair and vice-chair should have been 5-0 because Mr. Rossi abstained from the vote. 2) The second Roman numeral I should have been II.

*The minutes were **approved** as amended by unanimous vote, 6-0.*

### **B. Approval of the July 25, 2023 minutes.**

*Mr. Mannle moved to **approve** the July 25 minutes as presented, seconded by Mr. Rossi. The motion **passed** unanimously, 7-0.*

## II. OLD BUSINESS

- A. **Ashley Dickenson & Elyse Hambacher – 125 Elwyn Avenue** request a 1-year extension to the variances granted on November 16, 2021. (LU-21-172)

*Mr. Mannle moved to **grant** the extension for one year. Vice-Chair Margeson seconded and noted that it would be extended to November 16, 2024.*

Mr. Rheume said he would approve the motion but said the Board had to be careful about making automatic extensions now that the impacts of Covid-19 were over. It was further discussed.

[Timestamp 9:02]

*The motion **passed** unanimously, 7-0.*

## III. NEW BUSINESS – PUBLIC HEARING

- A. The request of **Alexandra Scott and Scott Scott (Owners)**, for property located at **271 Sagamore Avenue** whereas relief is needed to demolish the existing detached garage and construct an addition with attached garage which requires the following: 1) Variance from section 10.521 to allow a) 0.5 foot (6 inch) right yard where 10 feet is required; and b) 28% building coverage where 25% is maximum. Said property is located on Assessor Map 221 Lot 15 and lies within the General Residence A (GRA) District. (LU-23-103)

### SPEAKING TO THE PETITION

Designer Amy Dutton was present on behalf of the applicant; the owners Scott and Alexandra Scott were also present. Ms. Dutton reviewed the petition and criteria.

Mr. Rheume asked what took place to adjust the property line toward the neighboring property. Mr. Scott said the survey for the house to the right was done prior to its demolition and after the construction, another survey was done that changed the property line between that house and his house. Mr. Rheume said there was nothing in the application that reflected what the actual property line was, and he said the applicant was abutting very closely to the set property line. Mr. Scott said the garage was practically on the property line before the survey was done. Mr. Rheume said his main concern was expanding the current garage to 25-26 feet in height so that it would be right along a property line that also had issues. He asked why that extra height was needed and why the applicant didn't feel that it did not have a negative impact on the neighbor's property. Ms. Dutton said the lot was very narrow and going vertical was the solution for getting more square footage. She said the neighbor supported the project. Mr. Rheume asked if there was a plan to reuse any of the current garage's foundation. Mr. Scott said it wasn't really a foundation but was crushed stone. Mr. Rheume said an office was mentioned for the proposed second floor of the garage but a future bedroom over the garage was also listed but there was an office on the second floor. Ms. Dutton said the space over the garage would be an office. She explained that the office by

the back staircase was for the girls to do their homework. Mr. Scott said it was just an elongated hallway leading to the attic and that the hallway space wouldn't really be used. Mr. Rheume asked what the front portion of the proposed space was intended for. Mr. Scott said it would be a bathroom and playroom. Mr. Mattson said if the proposed mudroom were removed and the garage was a direct addition, it would still be within the 10-ft setback and closer to conforming. Ms. Dutton said they considered it but the rooflines felt massive.

Chair Eldridge opened the public hearing.

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

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

### **DECISION OF THE BOARD**

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

Mr. Rossi said it is within the public interest to support and grow the housing stock suitable for families in Portsmouth, so granting the variance would not be contrary to the public interest. He said it would do substantial justice because there would be no loss to the public by allowing the project to proceed. He said it would not diminish the values of surrounding properties, noting that there were no objections from the abutters. He said the applicant was creating a little extra room behind the house for the properties on Broad Street and overall would enhance the values of the surrounding properties. Regarding the unnecessary hardship, he said granting the variance would not alter the essential character of the neighborhood because the houses adjacent to the applicant's home were of similar massing to what was proposed and the design would be in keeping with the renovated homes on Sagamore Avenue. Mr. Mannle concurred and said it looked like the houses on either side of the applicant's house had generous renovations done, so it would be in keeping with the character of the neighborhood.

Mr. Rheume said he would not support the motion because what was asked for from a massing standpoint would severely extend the nature of the construction along that side of the property. He said the abutters may be okay with it but the Board's job wasn't to justify things by who felt okay by what. He said it came down to the criteria and he could not see a unique hardship with the property. He said the variance request would impose on light and air by creating a very large new addition right up against the property line that would change the character of the neighborhood. Chair Eldridge said she would support the motion because the ask was small. It was further discussed. [Timestamp 31:10]

*The motion **passed** by a vote of 5-2, with Vice-Chair Margeson and Mr. Rheume voting in opposition.*

Mr. Rheume recused himself from the following petition.

- B.** The request of **Tanner Family Revocable Trust (Owners)**, for property located at **380 Greenleaf Avenue** whereas relief is needed to construct a detached garage which requires a Variance from Section 10.571 to allow an accessory structure to be located closer to a street than the principal building. Said property is located on Assessor Map 243 Lot 63 and lies within the Single Residence B (SRB) District and FEMA 100yr flood & Extended flood hazard area. (LU-23-62)

### **SPEAKING TO THE PETITION**

The applicant Allison Tanner was present and reviewed the petition and criteria. She noted that the proposed garage would allow the reduction of the impervious area and would be farther away from the wetland and not noticeable to most people except for one neighbor.

Mr. Rossi said the variance request was to get the location of the garage closer to the road than the house, so since the wetlands buffer encompassed both the front and back yards, he asked how that affected the placement and why those conditions mitigated toward putting the garage in front of the house instead of behind it. Ms. Tanner said there was a retention pond, and in order to put the driveway further toward the back, they would disturb more of the buffer. She said they still had to come down the full length of the driveway and drive that much farther to get to the back of the house. Mr. Rossi said there would be a big increase in the impervious surface within the buffer. Ms. Tanner said it would still be 400 x 400 but they would put in crushed stone to make the rest of that distance. She noted that it was well treed and had lots of planting beds.

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. Mannle moved to **grant** the variance for the petition as presented, with the following **condition**:*

- 1. That the approval is conditional on the Planning Board's granting of the Wetland Conditional Use Permit.*

*The motion was seconded by Mr. Mattson.*

Mr. Mannle said the hardship was in the zoning itself. He said granting the variance would not be contrary to the public interest because the public had no interest in a garage behind a grove of trees across a wetland. He said it would observe the spirit of the ordinance. He said it would do substantial justice because the large lot with a house on it already existed, and to change the location of the garage to meet the criteria of the ordinance would involve a much longer driveway and possibly the cutting down of one or two trees. He said it would not diminish the values of surrounding properties because the lot was very large and the entire building envelope was in the wetlands buffer. Mr. Mattson concurred. He said the variance would not alter the essential character

of the neighborhood, and aside from the actual wetland and wetland buffer making the property unique, the structure was set so far back that the 30-ft rear yard setback would make it difficult to place the accessory structure anywhere else. He said it would be barely visible from the street, so it would not be contrary to the public interest and would be consistent with the intent of the ordinance.

*The motion **passed** unanimously, 6-0.*

Mr. Rheume resumed his voting seat.

- C. The request of **Carl Douglas Overn and Tatiana Overn (Owners)**, for property located at **40 Wilson Road** whereas relief is needed to construct a sunroom and deck expansion at the rear of the property which requires the following: 1) Variance from Section 10.521 to allow an eight (8) foot rear yard where 30 feet are required; and 2) Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 251 Lot 57 and lies within the Single Residence B (SRB) District. (LU-23-114)

## **SPEAKING TO THE PETITION**

The applicants Carl and Tatiana Overn were present to review the petition and criteria.

Mr. Rossi asked if the distance of eight feet from the sunroom to the property line was measured from the center of the sunroom. He also asked about the corner. Mr. Overn said he measured from the closest point. Mr. Rossi said the line was in the wrong place then and that it should be eight feet from that corner. Mr. Overn agreed.

Chair Eldridge opened the public hearing.

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

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

## **DECISION OF THE BOARD**

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

Mr. Rossi said granting the variances would not be contrary to the public interest because there was no public interest in micromanaging the configuration of the backyard, and the proposed addition did not affect the public interest. He said granting the variances would do substantial justice because there would be no loss to the public that would outweigh the loss to the property owner if the variances were to be denied. He said it would not diminish the values of surrounding properties because he thought that tidying up the backyard would make the area more enticing and pleasant

and would enhance the values of surrounding properties that had sightlines into the applicant's backyard. He said the unnecessary hardship was the special condition of the property; the house was oriented on the property in a diagonal, so the distance to the property line as one got to the edges of the building would be a little off because of that diagonal nature. He said due to that special condition of the property, the setback requirements didn't need to be strictly adhered to. Mr. Rheume concurred. He said the applicant seemed to be asking for a fair amount of relief, eight feet where 30 is required, but the SRB District was intended to have a lot of room between properties, and he thought that was being adhered to here. He said the neighboring backyards, the cluster of trees, and open area in the middle of the block created a sense that closest to the property line wasn't nearly as problematic as it might appear to be. He said the applicant met the hardship requirement because the minor extension of the existing narrow oddly shaped room was an acceptable use for the property. Vice-Chair Margeson said she would support the motion but that the application gave her pause because eight feet from the rear yard setback seemed a significant ask. However, she said there were special considerations due to the lot's configuration.

*The motion passed unanimously, 7-0.*

- D.** The request of **Go-Lo Inc. c/o Labrie (Owner)**, for property located at **2059 Lafayette Road** whereas relief is needed to demolish the existing structure and construct a two-story residential building containing 16 living units which requires the following: 1) Variance from Section 10.1113.20 to allow parking to be located in front of the principal building; 2) Variance from Section 10.533 to allow a structure to be located 58 feet from the centerline of Lafayette Roads where 80 feet is required; 3) Variance from Section 10.521 to allow 1,715 square feet of lot area per dwelling unit where 7,500 square feet is required; and 4) Variance from Section 10.440 Use #1.53 to allow 16 units where eight (8) are permitted. Said property is located on Assessor Map 268 Lot 13 and lies within the Mixed Residential (MRB) District. (LU-23-116)

## **SPEAKING TO THE PETITION**

Attorney Derek Durbin was present on behalf of the applicant, along with the owners/applicants the Labries, the architect Mark Gianinny, and the project engineer Eric Weinrieb. Attorney Durbin reviewed the petition, noting that the owner wanted to merge the two existing lots. He said the property was unique because it was zoned MRB and no other properties near it shared that designation. He said it was more economically feasible to demolish the building. He said the 750-sf units would let the applicants offer affordable housing to their employees. He reviewed the criteria in detail. [Timestamp 58:23]

Mr. Rossi said he thought 16 units was a big ask but found it intriguing that the stated intent of the project was to create housing for employees of the Labries' businesses. He said Portsmouth was in severe need of workforce housing and it was one of the City's objectives to increase the stock within the community. He asked if the applicant would be amenable to a stipulation that the project meet the criteria for workforce housing as outlined in Ordinance RSA 674.58. Attorney Durbin said

it would require four of the 16 units to be restricted to the 20 percent threshold. Ms. Casella agreed. Mr. Rossi said it would be a longer term solution to workforce housing difficulties. Attorney Durbin said the Gateway District had developer incentives to create workforce housing and to deed restrict properties but that it didn't apply to his clients because they couldn't take advantage of those incentives. He said statutory criteria had to be met with deed restrictions, which didn't allow much flexibility for the applicant. Mr. Rossi said a variance for 16 units would be an incentive.

Mr. Mannle said the term "workforce housing" as used by the applicant was a misnomer because it was really personnel housing. Attorney Durbin said he had been careful not to use that phrase because the owners didn't want to be restricted in that sense. He said it was really a request for 16 units. He said the units would be rented housing that would be made available to the employees at a reasonable rate. Mr. Mannle said the zoning table indicated that 5-8 units were allowed in the MRB District. He said the applicants had two lots, and he asked if the 5-8 units would get knocked down per the density of the lot. Ms. Casella said the applicant had to abide by the lot area per dwelling unit. Mr. Mannle said if the applicant was only allowed three units if the two lots were merged and that therefore it was more of a density issue than the number of dwelling units. Chair Eldridge said the housing would be suitable for the Labries' employees but wasn't solely for them. Attorney Durbin said the intent was to first offer the units to the employees, and anything that remained would be marketed to the public. One of the owners, Michael Labrie, said the intent was to have 16 units available to rent to the public. He said the project was designed such that the market rates would be lower than larger units, so he felt they were helping the situation with employees in the City-defined housing. He said it was nothing that they intended to restrict and reserve for their employees but it was really to create additional inventory for the community.

Vice-Chair Margeson said the MRB designations surrounded that sea of SRB and so on and made it tough to discern what the spirit and intent of the ordinance is. She asked what special conditions of the property made it impossible or close to impossible not to use it as an MRB. Attorney Durbin said the special conditions that made it less feasible to make certain uses of a property also made it more conducive to other uses of the property. In this case, he said the special conditions were the size of the two lots and the surrounding context of the area, which was residential but really characterized by the Westerly project cross Hoover Drive. He said the zoning was antiquated for those properties and he felt it was used for the mixed-use lower level commercial/residential use that never changed because it didn't have to. He said everything around it had morphed into a different zoning and different uses, which were special conditions.

Project engineer Eric Weinrieb said some of the special conditions was the way the lot was developed for the free-for-all access along Route One and the cars backing up. He said if they tried to redevelop the property, they would have to make it more conforming and limit the parking spaces in front, and people driving by would see no cars and think the property was empty. He said by keeping the office use, they would be handcuffed to that access and parking in front, which he thought was a special condition of the site. He said that was why they wanted to move the building forward. He said they also wanted to eliminate the driveway to create a safer access. He pointed out that there was also a multi-purpose path that would be affected.

Vice-Chair Margeson said she thought the 16 units were a bit of an ask but felt that the project was well thought out. Mr. Rheume asked what the benefit to the project was by parking in the secondary front yard because there was parking under the building. Mr. Weinrieb said the underneath parking was resident parking but a visitor wouldn't be able to park there, so they provided three visitor spaces and a handicap space outside. He said they also did not want to encumber Hoover Drive with additional parking. He said there were opportunities to move in the back but they would be using up a lot of the green space. Mr. Rheume said he still didn't understand the reason for putting the building closer to the road, which drove the need for relief. Mr. Weinrieb said they looked at creating an open space area for the residents and creating a buffer onto the residential property, so it was a balance. He said the parcel was skewed, so they moved it farther back from the road to get closer to the side yard setback. Mr. Rheume said there were no structural or drainage issues, and he asked if it was more of a desire to keep away from the residential area. Mr. Weinrieb agreed. He said there was a significant amount of runoff from Lafayette Road running through the site, and by eliminating the pavement in front, they would be able to capture and treat it. Mr. Rheume said the applicant did a good job of lowering down but still had a fair amount of reveal of the parking level to Lafayette Road. He asked if the applicant considered going down further to eliminate the reveal on that side. He asked why the ventilations along Lafayette Road were critical to making the parking lot work. Mr. Weinrieb said the grading was to ensure that the water coming off Hoover Drive into the garage would not be drained.

Project architect Mark Gianinny said that, based on the grading coming in from Hoover Drive where the garage floor level was set, it put them down to about a half-story for the parking. He said the code requires that an open parking garage have an open area along the perimeter that included the entrance door. He said they could relocate some of the openings to the other side but they were trying to align them with the other proposed openings on the other levels and they also wanted to conceal some of it with landscaping. Mr. Rheume said in 2017, the Board agreed that the next parcel down was a large one and that extending some of the concepts of G1 made sense. He said now the applicant was asking to take the next step by merging the two lots. He said it was almost like a Character District and asked if the design was compatible for what was called for there. Mr. Gianinny said he didn't know because it wasn't considered. He said they were looking at the context of other multi-family properties on Route One. Mr. Rheume asked if every unit would have two bedrooms and Mr. Gianinny agreed. Mr. Mattson asked if the applicant considered proposing just eight units instead of 16. Attorney Durbin said eight units were permitted and if the lots were separate, they could have 16 units, but the lot area per dwelling would restrict them to three units. Mr. Weinrieb explained why the numbers would no longer work if they had only eight units. He said the 750-sf units were so small that they would get only so much for rent. He said they were trying to mask the back lot parking.

Mr. Rheume asked about the Staff Memo's stipulation. Ms. Casella said the stipulation was added on bigger projects because as the project went through TAC and the Planning Board, some elements could move around the property. It was further discussed. [Timestamp 1:42:04]

Chair Eldridge opened the public hearing.

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



No one spoke.

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

John Hudson said he lived at the Westerly. He said there were many accidents due to speed and he was concerned about safety. He said 16 units with possibly two cars each plus visitors would cause a lot more congestion and risks. He said people coming off West Road routinely made left-hand turns where it was a right-turn only.

Diane (last name indecipherable) said she lived at the Woodlands and was also concerned about congestion in the area. She said eight units were fine but 16 were too big for the size of the lot.

Greg Mahanna of Pheasant Lane said he represented himself and the Pheasant Lane Homeowners Association. He said the traffic and backups on Lafayette Road were safety issues and sightlines were already restricted because the road curved. He asked that the petition be tabled until a traffic plan and a site walk could be done and to further consider whether the structure should be 15 feet closer to the center line of Route One. He noted that Lafayette Road was a State road and not a City one and asked who determined setbacks from the center line. He also noted that Route One would eventually be widened to five lanes. He said it was more of a safety issue than an affordable housing one. He said no projected rents were heard and felt that the proposed development was more luxury housing and not employee housing.

Peter Sanderson of the Westerly said he was concerned about safety issues on Lafayette Road.

A woman (last name indecipherable) of the Westerly said the values of surrounding homes and the Westerly would be affected. She said she didn't know if the applicant's employees could afford it. She said visitors would park at the Westerly or on the neighborhood streets. She asked that the Board do a site walk and that the existing apartments be remodeled.

Karen Parns of the Westerly agreed with the comments about the traffic and congestion issues. She said there were numerous accidents in the area. She asked how many parking spaces would be allotted for residents of 16 units. She said building closer to Lafayette Road would further obscure the view of people coming to Hoover Avenue and Lafayette Road from Elwyn Park and the Woodlands.

Jim Dolphin of the Westerly said he agreed with the other comments. He asked if it was logical to put more and more people in smaller units and still have quality of life.

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

Rick Becksted of 1395 Islington Street said workhouse housing in Portsmouth didn't work because developers couldn't afford the restrictions. He said the City had to find another way because the demand for workforce housing was too high and the formulas didn't work. He said what already existed on the property should be preserved and that more residential could be placed on the first floor. He said there was no hardship.

Project engineer Eric Weinrieb said the applicant would improve the sightlines because they would get rid of a driveway and the front parking and keep the vegetation in the front of the building low. He said they wanted to move the building closer to Lafayette Road and increase the setback from the right-of-way. He said no one knew the plans that DOT had for widening the road. He said the applicant had to go before TAC and the Traffic and Safety Committee, and if the property were to be redeveloped as retail, the traffic could be more significant.

William Downey of 67 Bow Street (via Zoom) agreed with Mr. Weinrieb. He said the traffic flow would be further compounded if the building were commercial.

Attorney Durbin said none of the neighbors' concerns related to the relief sought, which was density and acreage. He said the lot could support it and that the traffic safety was an issue that would be addressed at the Planning Board and Traffic and Safety Committee level. He said repurposing the building would be a substantial investment and would be very different than what was there now because it would have to be a higher intensity use to support the economics.

Diane (last name indecipherable) said going to 16 units meant more congestion and not just more traffic. She said the density was an issue.

Rich Becksted said the Board had no control over safety and traffic but if they allowed the 16 units, they would impact the safety and density issues.

Paul Brennan of the Westerly said there would be 32 more people taking a left.

Greg Mahanna said the applicant wanted a variance to move a building closer to Route One but wouldn't need a variance if the building stayed where it was.

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

## **DISCUSSION OF THE BOARD**

Mr. Rheume said there was a lot of passion about the project and the Board had to separate that passion as much as possible by looking at the facts and balance them against the criteria. He said the applicant was asking to put some parking in the secondary front lot. He said the Board didn't want a sea of asphalt in front of the building, so the project met the criteria for that. He said the Traffic and Safety Committee and TAC would look at the traffic issues and the sightline issues. He said the real crux was the combined last two criteria, the relief asked for the number of units on the lot and the density of the lot area per unit. He said the applicant was also restricted by the size of the lot. He said the building could be divided into three and made into luxury townhouses and be compliant. He asked if the Board was comfortable with going from three units to 16 units to allow the level of density with traffic and egress implications. He said most of those things were the purview of the Planning Board and TAC, but the amount of intensity of use on the property was too much and he thought that variance couldn't be allowed. Vice-Chair Margeson agreed that the lot area per dwelling unit was the main issue. She said it was a difficult application to analyze because

the purpose of the mixed residential business district was to provide a transition between residences and businesses and there was no real business in the application. She said the Board had to look at the spirit and intent of the ordinance and it was difficult to define in this case, given that it was an island amid Single Residence B. She said the fact that the Westerly was next door made her less concerned about the lot area per dwelling unit, given that there was so much more residency there in the SRB District.

Mr. Mattson said the Westerly had 40 plus units that generated more traffic than the proposed project would. He said there was no variance asked for the size of the building and the height and building coverage were allowed. He said there could be fewer bigger units or more similar smaller units in it, which would cost less. Mr. Mannle said it was MRB and by right, the applicants could do eight units of 1500 square feet each or even do a 7-11. He said it was different zoning from the Westerly. He said the nearby traffic had always been problematic and didn't think the project would make that much of a difference. He said his issue was the corner lot and the density. He said the center line issue would be analyzed by the Planning Board and TAC. Mr. Rossi said he did not buy into the argument that by approving a variance the Board may be preventing a worse use of the property. He said the so-called worse use was allowed by right and that it wasn't in the Board's purview to circumvent the right of property owners to use property as it's already designated in the zoning ordinance. He said his biggest concern was Lafayette Road and the zoning map and the history of what's been going on in the area. He compared it to a time lapse photo. He said the project would fit into the Gateway District perfectly and might be eligible for workforce housing incentives but that it wasn't in the Gateway District. He said the Westerly was approved because it was adjacent to the Gateway District and wouldn't change the character of the neighborhood. He said the next property was adjacent to the Westerly and could have the same reasoning, and so on. He said he could see it going in a domino fashion all the way to Cumberland Farms. He said Hoover Street was the Rubicon and the natural edge of the *de facto* Gateway zoning that's been extended that far, and he didn't think it was in the interest of the City and residents to continue to extend it beyond. He noted that Attorney Durbin said the intent behind the construction was to create housing for the applicant's employees, so the units were designed to be affordable in the context of the Portsmouth housing market. He said it didn't say that in the definition of the Portsmouth zoning ordinance but it got him into a more favorable frame of mind as a creative solution. He said the Board then learned that there was no intention to make it workforce housing and it was stated that the employees were unlikely to afford to live in the units, so he was confused about why the rationale was in the proposal. He said all those things weighed against approving.

Chair Eldridge said she didn't see the hardship. Mr. Rheume said the density of the proposal was greater than the Westerly but the Westerly was a bigger structure with more units. He said the applicant was asking for higher density. He said three units and not eight were not allowed by right and that the building could have three units and still be big. He said affordability was not the Board's purview and was based on the median cost of the NH Seacoast area, which was quite high. He said he did not think that the applicant indicated that they didn't think their employees could not afford to live there but said they were not sure that they would be interested in living there because some might have families or live at home.

## DECISION OF THE BOARD

*Mr. Rossi moved to **deny** the petition, seconded by Ms. Record.*

Mr. Rossi said granting the variance would not observe or be consistent with the spirit of the ordinance and that it would alter the essential characteristics of the neighborhood. He said the property was surrounded by SRB neighborhoods and was in an MRB one and it didn't comport with the spirit of MRB because it didn't have a business component and did not comport with the spirit of the ordinance. He said he would not address all the other failures. Ms. Record concurred and said she just did not see the hardship. Mr. Rossi agreed and said there was no hardship presented, particularly in regard for the need for 16 units as opposed to eight or for the low square footage per unit, as compared to the ordinance's provisions. Mr. Mattson said that, aside from the 16 units, the applicant must establish that the property is burdened by the zoning restrictions in a manner distinct from other similarly situated properties. He said it was similar to spot zoning and MRB but surrounded by different zoning. He said the unique condition of the property was the restriction from other similarly situated properties. Mr. Rheaume said he would reluctantly support the motion and gave several reasons why. He said the variance requests went beyond what the Board could approve and tie into their criteria.

*The motion passed and the application was **denied** by a vote of 5-2, with Vice-Chair Margeson and Mr. Mattson voting in opposition.*

- E. The request of **Creeley Family Trust, Sean Creeley and Andrea Creeley Trustees (Owners)**, for property located at **337 Richards Avenue** whereas relief is needed to demolish the existing detached garage and construct an addition and attached garage to the primary structure which requires a Variance from Section 10.521 to allow a one and a half (1.5) foot rear yard where 20 feet is required. Said property is located on Assessor Map 130 Lot 2 and lies within the General Residence A (GRA) District. (LU-23-113)

## SPEAKING TO THE PETITION

Attorney Derek Durbin was present on behalf of the applicant, along with project designer Jen Ramsey. Attorney Durbin reviewed the petition and said the garage was in poor condition and too small to accommodate a modern vehicle and was just used for storage. He said the proposed new two-car garage would have a living space above it and would be eight feet taller than the existing structure. He said there were two letters in support, one from the most affected abutter.

Vice-Chair Margeson asked if the addition would take up the left side yard space. Attorney Durbin agreed and said it would be more toward the usable yard area. Vice-Chair Margeson said it was another issue where the garage was right on the property line, and she asked if the paved driveway was for the abutting property on the other side. Attorney Durbin agreed and said the garage slightly encroached onto his client's property. He said the new garage would be angled and pushed in more from the back side of the existing garage. Vice-Chair Margeson said if the garage were pushed in so

that it was conforming, the applicant would have some overlap with the driveway and would probably match up better with the abutting driveway. Attorney Durbin said the driveway would then extend back further, so there would not be a usable side yard. He said it would vastly increase the size of the paved driveway area. He said it would replace the impervious surface with Impervious surface but would eliminate any potential for the mud room/living room area proposed that would tie in with the garage addition.

Mr. Rheume asked what the current gross area was on the single floor for the existing structure. Attorney Durbin said it was about 1,100 square feet. Mr. Rheume said there was a huge open space off to the right hand side of Richards Avenue but the applicant claimed that putting a driveway there was different from the rest of the neighborhood. He asked why one more driveway in that area wasn't in keeping with the neighborhood. Attorney Durbin said the applicant did their due diligence and the neighbors disfavored putting a driveway in that area. He said the primary access was already off Lincoln Avenue. Mr. Ramsey said Richards Avenue opened like a one-way street when there were cars parked on each side and there was concern with adding another garage. She said a home with 2 or 4 cars backing out in that street would add more congestion. She said they were adding a sizeable addition but trying to keep some of the home's flow and functionality attributes. Mr. Rheume said the requested 1-1/2 feet was tight to the property line. He asked if the applicant had considered keeping the garage as a one-car one and expanding out again into that portion of the lot that was allowed by zoning. Ms. Ramsey said they looked at several options and opted for a two-car garage from a functional standpoint. She said the home was only 20 feet wide and if they moved the garage and swung it around, the sunny side of the play yard would be obliterated and impact the neighbors' light and privacy. Attorney Durbin said the neighbors and the applicant discussed having a maintenance easement. He said the portion of the addition along the property line would be angled away from the abutting property but would only be a few more feet in length along that boundary.

Chair Eldridge opened the public hearing.

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

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

### **DISCUSSION OF THE BOARD**

Mr. Rossi said the small requested variance would not change the degree of nonconformance of the lot. He said the massing along that border would be significantly different, noting that he walked along the area and it looked out of place by being too small of a house with a lot of massing around it. He said he did not think the change would affect the neighborhood's character, and he noted that the most affected abutter was in support. Vice-Chair Margeson said she would not support the application for the same reasons Mr. Rossi said he would. She said she saw the increase in massing and didn't see a hardship for having a two-car garage. Mr. Rheume agreed and said he didn't see a hardship. Chair Eldridge said the ask was small but the change to the property would be enormous. Mr. Rossi said he supported the petition because modernizing that type of home to meet the contemporary needs of a family was a strong mandate within the public interest. Mr. Mannle said there were other ways to have a two-car garage and a big side yard.

## DECISION OF THE BOARD

*Mr. Rheaume moved to **deny** the variance request, seconded by Mr. Mannle.*

Mr. Rheaume said the petition only had to fail one of the criteria. He said the biggest issue was what was unique about the property that prevented its adequate use by the applicant in any other way. He said he didn't see a hardship sufficient to warrant the level of relief asked for. He said he questioned the request for 1-1/2 feet off the property line for a substantial building height. He said the massing and size were much larger than existing and there were potential relief valves within the property itself. He said the proposal went in the one direction that the zoning ordinance did not allow and he didn't think it met the hardship criteria. Mr. Mannle concurred and had nothing to add.

*The motion **passed** by a vote of 4-3, with Ms. Record, Mr. Rossi, and Chair Eldridge voting in opposition.*

**F. REQUEST TO POSTPONE** The request of **Kathryn Waldwick and Bryn Waldwick (Owners)**, for property located at **30 Parker Street** whereas relief is needed to demolish and remove the existing shed and covered porch and construct a new attached shed with a covered porch which requires the following: 1) Variance from section 10.521 to permit a) 45% building coverage where 35% is allowed, b) one and a half (1.5) foot right side yard where 10 feet is required, and c) two (2) foot rear yard where 20 feet is required; and 2) Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 126 Lot 27 and lies within the General Residence C (GRC) District. **REQUEST TO POSTPONE (LU-23-117)**

## DECISION OF THE BOARD

The petition was **postponed** to the September 6 meeting.

## IV. ADJOURNMENT

The meeting **adjourned** at 10:48 p.m.

Respectfully submitted,

Joann Breault  
BOA Recording Secretary