

**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 22, 2023**

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

**MEMBERS EXCUSED:** ML Geffert, Alternate

**ALSO PRESENT:** Jillian Harris, Planning Department

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**Notes:** Alternate Ms. Record took a voting seat for all petitions. The timestamps denote the time of the discussion in the meeting video.

Chair Eldridge stated that the applicant for Item E, 303 Bartlett Street, requested a postponement.

*Mr. Rheame moved to **suspend** the rules by pulling Item E, 303 Bartlett Street, out of order. Mr. Mannle seconded. The motion **passed** unanimously, 7-0.*

*Mr. Mannle moved to **postpone** the petition to the September 19 meeting, seconded by Mr. Rossi. The motion **passed** unanimously, 7-0.*

## **I. NEW BUSINESS – PUBLIC HEARING**

Mr. Mattson recused himself from the following petition. The Board discussed whether Fisher v. Dover applied and decided that it did not need to be invoked. [Timestamp 3:20]

- A.** The request of **Islamic Society of the Seacoast Area ISSA (Owners)**, for property located at **686 Maplewood Avenue** whereas relief is needed to construct 6 single living unit structures which requires the following: 1) Variance from Section 10.520 to permit 10,462 square feet of lot area per dwelling unit where 15,000 if required; and 2) Variance from Section 10.513 to permit six (6) free standing buildings where only one (1) is permitted. Said property is located on Assessor Map 220 Lot 90 and lies within the Single Residence B (SRB) District (LU-23-57)

## **SPEAKING TO THE PETITION**

Attorney Justin Pasay was present on behalf of the applicant, along with project engineer John Chagnon and project architect Carla Goodnight. He reviewed the petition. [Timestamp 8:34]

Mr. Rossi asked if the applicant looked at the spacing between the buildings themselves and how far apart they were compared to the SRB zone further up Maplewood Avenue. Attorney Pasay said the project complied with the side setback requirements and that he didn't anticipate any relief for that piece of it. Mr. Rossi said he was looking at the number of structures and how that compared to the density in the sense of having the open space around structures when there is one structure per lot elsewhere in the neighborhood. Attorney Pasay said the goal was to have a reasonable amount of spacing between the individual units but also be able to facilitate continuing the proposal for 6500 square feet of recreational space. He said there was the issue of the form of ownership as a condominium instead of a single-family lot. He said it went to the uniqueness of the property, and they hoped to strike that balance between the form of ownership as a condominium and the density.

Mr. Chagnon reviewed the site plan [Timestamp 15:22]. He noted that the setbacks between the buildings was approximately 20 feet, so if the zoning setback of 10 feet to the property line were applied, it aligned with the light and air between buildings in the zone. Ms. Goodnight reviewed the petition and Attorney Pasay summarized the variance criteria. [Timestamp 18:40]

Mr. Rheume clarified that the amenity was for the use of the six condominium units and their guests and was not a public one. Mr. Rossi said the previous proposal of subdividing the lots and building a unit on each lot wasn't feasible, and he asked if it was due to the need for an access road. Attorney Pasay said building a city road that met the design standards to accommodate a formal subdivision had been the issue.

Chair Eldridge opened the public hearing.

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

Jim Lee of 520 Sagamore Avenue said he was a real estate broker and that one of most important things was location. He said it was a terrible location, which made it a good project. He said several previous applications to build things there didn't work out, and the big benefit to the public was that the units would be so far back that they would not be seen from the road.

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

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

#### **DISCUSSION AND DECISION OF THE BOARD**

Vice-Chair Margeson said the property did have special conditions and was three times the size that the SRB zone required. She said it had an odd configuration with a small frontage on Maplewood Avenue, but she didn't believe that it met the hardship for six units. She noted that the zoning ordinance said there was only supposed to be one freestanding building per lot and that she would have no problem with four dwellings per lot on the property because it would still retain the lot area requirements of the SRB, but she did not think the applicant met the hardship criteria for the additional two dwellings on the lot. Mr. Rossi agreed that four might be an easier request.

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

Mr. Rheume said the applicant met the criteria [Timestamp 33:01]. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said the unique shape of the property, long and narrow on the street and long in depth, created a set of circumstances that allowed the applicant to take advantage of that by putting multiple buildings that were not generally allowed in the SRB zone, but the positioning of them wouldn't be visible from the road. He said the applicant made a good argument that he approximated the overall density of the other SRB properties to the west. He noted that the Business and GRA districts were also closer to the property and had higher densities, so he felt that the nature of the density aspect was reasonable and within the spirit of the ordinance. He said the condos would be hidden and were respectful of the overall architecture of the neighborhood and Portsmouth in general. He said granting the variances would do substantial justice because of the other unique characteristics, like the short frontage, lot depth, and topography, and there was really nothing the public would perceive from the homes that would outweigh the applicant's ability to make full use of his property. He said it would not diminish the values of surrounding properties because the property butted up against the Business District and had the interstate highway on the opposite side. He said what was built would not be perceived by anyone as something that would be awkward and reduce property values. He said it was also burdened by a power line easement on the rear of the property. Relating to hardship, he said there were the unique characteristics of the property sandwiched between the Business district and very close to the GRA district and up against the interstate. He said the property's long and narrow depth did not look like any of the other SRB parcels nearby and the ones that were closely imitated were ones that had multiple buildings on them. He said those unique characteristics allowed more development than would normally be allowed and that it was a permitted use in a permitted zone.

Mr. Rossi concurred. Regarding the hardship, particularly as it pertained to six structures on that lot, he said there was a special condition of the lot, the shape and size of it and felt that the building of six structures on it did not defeat the public purpose of the SRB district because of the way the property was designed. He said it would maintain a density that was as good if not superior to the surrounding SRB properties and it would maintain adequate space between the structures so that the intended purpose of the ordinance to provide light and air between buildings would be achieved, even though it would be a bit more dense than what the SRB would typically allow.

*The motion **passed** by a vote of 4-2, with Mr. Mannle and Vice-Chair Margeson voting in opposition.*

Mr. Mattson returned to his voting seat. The Board discussed whether Fisher v. Dover applied and, except for Vice-Chair Margeson, had no issues with Fisher v. Dover. [Timestamp 42:03]

- B. The request of Karyn S. DeNicola Rev Trust, Karen DeNicola Trustee (Owner), for property located at 281 Cabot Street whereas relief is needed for a variance from Section**

10.521 to allow a) three (3) foot front yard where 5 feet is required, b) three and a half (3.5) foot left side yard where ten (10) feet is required, and c) 36% building coverage where 35% is allowed; and 2) Variance from Section 10.515.14 to allow two (2) mechanical units to be located 7 feet from the property line where 10 feet is required. Said property is located on Assessor Map 144 Lot 20 and lies within the General Residence C (GRC) District. (LU-23-84)

### **SPEAKING TO THE PETITION**

Attorney Justin Pasay was present on behalf of the applicant, with project architect Carla Goodnight and project engineer John Chagnon. He reviewed the petition [Timestamp 50:16]. Ms. Goodnight said two letters of support were received, and she reviewed the site plan [Timestamp 55:02]. Attorney Pasay reviewed the criteria and said they would be met. [Timestamp 58:48]

Mr. Mattson asked if the applicant averaged the front yard setbacks for the neighboring properties. Attorney Pasay said they had not but noted that there was encroaching by the stairs that went over the line into the City's right-of-way but was consistent with the properties on the east side.

Chair Eldridge opened the public hearing.

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

Elizabeth Bratter of 159 McDonough Street and 431 Cabot Street explained why she thought it was appropriate for the variances to be granted. [Timestamp 1:07:02]

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

No one spoke.

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

James Beale of 227 Cabot Street said 28 Rockingham had a lot that was nine square feet larger and the owner was able to put a 1,358-sf house on it without any variances. He said the proposed view of Cabot Street was misleading because it looked like the new building would be the same height as the other four buildings on the street. He said there was no information in the packet about what the finished height of the building would be. He said the applicant indicated that their lot was smaller than the rest of the lots on Cabot Street, but he said there were five smaller lots. He said allowing the variances would be a detriment to the public due to the loss of light and air to the direct abutter.

Ms. Goodnight said they would replicate the existing building's width, height, pitch, etc. and that the new building at the rear would be narrower, so the roof would be lower. She said two of the requested variances were needed to keep the proposed building in the same position as the existing one, so the side variance and the other front yard variance were dictated by that position.

Mr. Mannle asked what the height of the roof on the final building would be. Ms. Goodnight said she didn't recall but that it would be the height of the building next door.

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

### **DISCUSSION OF THE BOARD**

Mr. Mattson said the building height as defined in the ordinance was being halfway between the eave and the ridge, and he further explained it. He said the building was shown as 25 feet tall on the application, and if the applicant went beyond what was allowed, a variance would be needed. Mr. Rossi said the applicant wanted to demolish a building, so he would start with a clean slate. He asked why minor improvements and setbacks compared to the existing structure were relevant. He said the hardship criteria would have to be satisfied and he didn't see how they would be. Mr. Mannle said he was unaware that the house would be demolished because it wasn't in the Legal Notice, but he agreed that it would be a clean slate and that a 30-ft wide structure could easily fit on the parcel. Mr. Rheume explained why he thought there was a hardship and said what was being asked for in terms of setbacks made sense. He said the applicant was consistent with the allowable lot coverage because they were meeting the current 36 percent. Mr. Mattson agreed that a 30-ft wide house could be built but there could be a hardship because the lot was narrower than allowed by the district. He said the building's design was being driven by the existing historic building, and the new building would be closer to conforming.

Vice-Chair Margeson said the lot depth was about 27.5 feet longer than what was required by the zoning ordinance, so the applicant had a lot of space to go back just the two feet for the front yard. She said the applicant was trying to take advantage of the open space on the other lots. She said she agreed with the Board's comments about the front and left yard setbacks but said there would be a much bigger structure on the lot line close to the abutter. She said the applicant could conform to the zoning ordinance on the side yard setbacks if they cut off some of the house. She said the purpose of the zoning ordinance was to protect structures of historical and architectural interest in the City, even outside of the Historic District. She said the potential to change the character of the neighborhood was great and she would not support the application.

### **DECISION OF THE BOARD**

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

Mr. Rheume said the total building coverage relief what essentially what was there now and only one percent above what was allowed. He said it came down to the applicant being compliant on the side yard setback with the new addition that would recreate the feel of the old home and continue the look and feel of the neighborhood. He said the Board had to be careful about taking on the preservation of historic structures, which he further explained [Timestamp 1:28:40]. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance because the proposal was in keeping with the overall character of the neighborhood. He said the requested relief was not excessive and the applicant had tried to respect all the setback

requirements. He said the positioning of the home would be in keeping with the current positioning of the row of houses. He said substantial justice would be done because there was no public perceived need that would say that having a slightly additional setback of the driveway from the next house over would provide a substantial benefit. He said the benefit of keeping the overall rhythm of the street would outweigh any perceived need to more fully enforce the zoning ordinance. He said granting the variances would not diminish the values of surrounding properties, noting that the property was probably a victim of demolition by neglect and the replacement would increase the values of surrounding properties due to its modern amenities and by being a more structurally sound building. Relating to the hardship, he said some of the unique conditions of the structure being demolished had a historic presence of being shoved to one side of the lot and having the driveway on the other side. He said the additional structures were compliant with the setbacks and that the use was a legitimate one for replacing a single-family home with another single-family home. Mr. Mattson concurred. He said the existing home could be demolished without a variance and a contemporary one could be built within the setbacks, so he appreciated the effort gone into not altering the essential character of the neighborhood.

Mr. Mannle said he would not support the application because the applicant had structural issues with the existing house but they still bought it, knowing that they would come before the Board for relief. Mr. Rossi said he still had a problem with the hardship standard and thought that when knocking a structure down and starting with a green field, the burden of approving the hardship on all of those things was not comparative to the structure that currently existed because its foundation no longer had any relevance. He said he did not see anything in the stated hardship and unique characteristics of the lot, and he did not agree that it was a unique lot because it wasn't smaller than the other lots on that side of Cabot Street and was not the only lot adjacent to the CD-4 District. With regard to whether the Board had a basis for considering the preservation of structures of historic or architectural interest, he said that was a broadly interpretable statement within the zoning ordinance. He said one could argue that the Board could make that determination because they had local knowledge of the City but he didn't think it was a good idea for the Board to speculate on whether they had a solid legal foundation for indulging in such determinations. He said there was a big difference in a historic structure and something that was rebuilt to look like one.

*The motion **passed** by a vote of 4-3, with Mr. Mannle, Vice-Chair Margeson, and Mr. Rossi voting in opposition.*

The issue of whether Fisher v. Dover applied to the next petition was discussed by the Board and it was agreed that Fisher v. Dover did not apply. [Timestamp 1:44:08]

- C. The request of **Novocure Inc. (Owner)**, for property located at **64 Vaughan Street** whereas relief is needed to construct a penthouse which requires Variances from Sections 10.5A43.30 and 10.5A21.B (Map) to allow a maximum height of 47 feet where 42 is allowed. Said property is located on Assessor Map 126 Lot 1 and lies within the Character District 5 (CD5) and North End Incentive Overlay District. (LU-20-214)

## **SPEAKING TO THE PETITION**

Attorney John Bosen was present on behalf of the applicant, with Dean Smith from Novocure and project architect Mark Mueller. Attorney Bosen said they appeared before the Board in 2022 and were a denied a height variance but several things occurred, which he reviewed [Timestamp 1:44:42]. Mr. Mueller then reviewed the plan and Attorney Bosen reviewed the criteria.

Vice-Chair Margeson said the applicant stated that the hardship was that there was no outdoor space for employees to congregate, but she thought they could do so without the penthouse. Attorney Bosen said the lot was an irregularly-shaped one that had frontage on two rights-of-way and potentially one on the Worth parking lot. He said filling in that area of the penthouse would allow the employees and guests of Novocure to use it on a regular basis despite the weather.

Chair Eldridge opened the public hearing.

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

Barry Heckler of 25 Maplewood Avenue Provident Condominiums said he was the president of the Board of Directors and that all the condo owners were in support of the enclosure of the rooftop deck. He said it would add to the value of the Novocure building and would also be available to Portsmouth residents if they needed a place to congregate. He said it would not be noticeable by any vantage point in and around the 25 Maplewood Avenue property or down Vaughan Mall.

John Ducey said he owned 172 Hanover Street and shared a common wall with the applicant. He said the top of the building wouldn't be seen at all.

Allison Griffin of 25 Maplewood said she spoke against the project previously but now it had the appurtenance and the second part of the building would match it. She said it made the building look better and she was no longer worried about the height.

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

No one spoke.

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

Katherine Hillman said she was a city resident and thought an interesting solution would be a rooftop garden instead of an all-glass space.

Elizabeth Bratter of 159 McDonough Street read a synopsis of the letter she sent to the Board. She said the structure had a flat roof and not a mansard roof like the applicant claimed. She said the penthouse was being shown as a 14-ft tall one and would have a height increase of 54 feet instead of the allowed 40 feet. She said the variance should not be approved and she explained why the project did not meet the criteria [Timestamp 2:11:30].

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

## DISCUSSION AND DECISION OF THE BOARD

Mr. Rossi said the buildings to the north were lower than 47 feet and asked what differentiated the applicant's structure from those in terms of hardship. It was further discussed. Vice-Chair Margeson said the building height requirement was currently 40 feet with the penthouse at 42 feet and the other five feet was not allowed by the ordinance. Mr. Rossi said he weighed a 5-ft variance more heavily than he would have in the old ordinance because it was more impactful. [Timestamp 2:31:20]

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

Mr. Rossi said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said there was no vested interest in the public to deny the variance because it did not impact the safety, health, and welfare of the general public. He said substantial justice would be done because there would be no loss to the public with regard to the appearance of the area because the structure is mostly not visible in the surrounding streetscape. He said granting the variances would not diminish the values of surrounding properties because several of them were already taller and having a penthouse on a nearby property would have no impact in a negative way on the values of the properties. He said the penthouse had a nice aesthetic to it and would look a lot better than an open flat roof and would enhance the values of surrounding properties where it could be seen. Relating to the hardship, he said the appurtenances of the elevator on the ends shielded the sight line from the properties on Maplewood Avenue. He said the ridge line did match up with the top level of the appurtenances, which was a special circumstance that distinguished it from the nearby properties in a way that was relevant to the variance being applied for. He said denying the variance due to those special conditions would not do anything to improve the way the building fit in with the surrounding neighborhood and would not alter the character of the area. Mr. Mattson agreed that it would not alter the area's character, noting Jimmy's Jazz Club with its glass structure. He said that the amount of rights-of-way surrounding the property on all sides and the only other building that could be affected (La Caretta) were unique conditions of the property where it was zoned a small lot and had less concerns of light, air and privacy being affected by neighboring buildings. He said several other surrounding buildings were taller. He said the proposal would add functional space to existing parts of the structure that were already at this height and would not dominate or be out of scale with the neighboring properties. He said there would be no fair and substantial relationship between the purpose of the height requirements and its application to the property, and he noted that the penthouse would be less visible due to the setbacks.

Mr. Rheume said the penthouse would not change the fundamental use of that portion of the property. Chair Eldridge said she would support it for many of the stated reasons and because she considered the 5-ft request minor in the whole mass of the building.

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



The Board decided that Fisher v. Dover was not invoked in the following petition. [Timestamp 2:59:02]

- D.** The request of **Cynthia Austin Smith and Peter Smith (Owners)**, for property located at **9 Kent Street** whereas relief is needed to demolish the existing two (2) living unit structure and construct a one (1) living unit structure which requires a Variance from Section 10.521 to allow a) 5,000 square feet of lot area where 7,500 square feet are required and b) 5,000 square feet of lot area per dwelling unit where 7,500 square feet are required. Said property is located on Assessor Map 113 Lot 42 and lies within the General Residence A (GRA) District. (LU-23-119)

### **SPEAKING TO THE PETITION**

Attorney Monica Kaiser was present on behalf of the applicant, with project engineer John Chagnon and landscape architect Victoria Martel. She reviewed the petition and site plan. [Timestamp 3:00:58]

Mr. Rossi said it seemed that the crux of the issue was whether the nonconforming use was being expanded, which would help determine whether a variance was required. Attorney Kaiser said the use would be reduced by the fact that there was an existing duplex that supported two families and a single-family was proposed. Mr. Rossi said the use was residential and it was a nonconforming type of use in the past. He asked if the volume of the new building would be the same or larger than the existing structure. Attorney Kaiser explained why there was a ten percent reduction in building coverage. She said the new building's height would comply and required no relief, but she said she didn't know the height of the existing building. Vice-Chair Margeson said the patio would be less than 18 inches so it wouldn't count as a structure, but there were several things on that patio, like a grill and a spa, and she asked if those things were built in. Attorney Kaiser said the spa was treated by City Staff as an accessory structure and met the 5-ft setback requirement. She said it was the type of thing that could also be removed, but in this case it was set into the ground and required no exterior mechanicals. She said the applicant had been advised that it required no relief. Vice-Chair Margeson asked what the structure adjoining the grill was. Attorney Kaiser said it was on the landscape plan and within the building envelope for the side and the rear and didn't require relief. Mr. Mannle said that any structure 18 inches aboveground was part of the building. He noted the 6-ft high masonry wall on the proposed pavers on the abutter side and a 4-ft wall on the back of the property. Attorney Kaiser said those were treated as a fence. Vice-Chair Margeson said the plans were complicated and it wasn't apparent as to where the building envelopes were.

Chair Eldridge opened the public hearing.

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

No one spoke.

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

Dave Mikolaities of 19 Kent Street said the plan set was incomplete compared to the original one because it missed the patio and driveway sections, drainage and grading plans, utility and landscaping plans, and architectural renderings. He said the proposal was contrary to the public interest because the new home would increase from 30 feet to 56 feet in length and the mass of the home will be 56'x40' high and alter the light and air of the public. He said the conforming use would be expanded. He said the proposal failed the criteria.

Cliff Hodgdon of 10 Kent Street said the proposal appeared to comply with the lot size setbacks but the house was an imposing structure and looked out of place with the character of the neighborhood and adjoining city parks. He said the owners thought they had the right to build part of their driveway on the city property at the end of the Rockland Street Extension, and he asked what would happen with snow removal and access to the playground and Langdon Park. He said it wasn't a good idea to transplant a fruit tree on an unpaved city sidewalk. He asked where the stormwater would go. He said the proposal had a lot of vagueness and lacked detailed information.

Duncan MacCallum of 536 State Street said the applicant was entitled to a variance because the lot was only 5,000 square feet, but the lot was a third smaller than normally required for a residential dwelling and the building would be 40 feet high. He said a condition should be included stating that the building height must be smaller or only two stories. He said he was told that the applicant planned to raise the ground level by 17 inches, which would make the size of the building even higher. He said those changes would change the character of the neighborhood.

Barbara Adams of 75 Kent Street said the percentage of lot coverage was still being increased the same way as it was in the first application. She said the underground garage showed a need for a section of asphalt driveway to encroach on part of Langdon Park's grassed area to provide adequate entry in and out of the proposed driveway and garage. She said the cars that were parked on both sides of the end of Rockland Street could be prevented from parking. She said she saw no evidence of hardship because the owners bought the property knowing what it was. She said the proposed design did not meet the character of the neighboring houses nor the City's Master Plan.

Bill Arakelian of 18 Kent Street said the new building would be a vastly oversized one on an undersized lot that would double the size of what was already one of the largest homes in the neighborhood. He said it would be in a very prominent location and would have a negative impact on the abutter and the park. He said the masonry walls on top of an 18" grade would result in a 5'5" cement wall for Langdon Park and the trees would block a sidewalk area on Rockland Street.

Esther Kennedy of 41 Pickering Avenue said the building's size would change the neighborhood and the look of Portsmouth and thought there was no hardship.

Petra Huda of 280 South Street said she agreed that there was too much missing data for the Board to make a decision. She said it was an excessive proposal that would alter the character of the neighborhood and thought the Board should either request more information and drawings or deny the application until they had all the information.

Jim Lee of 520 Sagamore Avenue said there was a disturbing trend in town where newcomers find a house and decide it doesn't work for them and that they need to demolish it and build something bigger. He said any benefit to the applicant would be outweighed by great harm to the public.

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

Rick Beckstead of 1395 Islington Street said the essential character of the neighborhood would be changed because the proposed home would stand out. He said it was happening all over the city and jeopardizing the character of the neighborhoods. He said there was no hardship.

Mr. Chagnon said the applicant was applying the zoning regulations to dimensional use for the property. He said the Board had enough information to make a decision. He said the plans complied with all the other requirements regarding development of the lot. He said the runoff would not be increased to any neighboring property and the Traffic and Safety Committee would properly site the driveway. He said every public driveway used public property to get from the street to the garage. He said what was seen from the park was a secondary issue. He said the proposal complied with the setback, building height, and coverage requirements as well as lot coverage. He said the proposed structure was a 3-story one and the height wasn't relative to lot size because nothing in the ordinance said one should vary the height of the structure based on the size of the lot. He said the new trees were approved by the Trees and Greenery Committee for planting in a public place.

The Board had questions. Mr. Rheume noted that Mr. Chagnon referenced the height of the proposed structure as 34'6" above an average grade. Mr. Chagnon said the definition was from existing grade, as it was 6 feet from the proposed structure. He said the structure's height was measured from there to the midpoint. Mr. Rheume asked what similar dimensions would be to the existing building from the average grade. Mr. Chagnon said it would be wider but didn't know the exact numbers. Vice-Chair Margeson asked how the underground parking would be done. Mr. Chagnon said the property currently rose from the street, and the parking would go down to the basement level from the street. Vice-Chair Margeson asked if the grade would be raised. Mr. Chagnon said possibly. He said a set of steps went up to the yard and the yard was proud of the street about 3.5 feet and that it was at least 3.5 feet to get to a plateau at the base of the current structure. He said the existing floor level grade was about 32 feet and that they didn't have the grading plan but he didn't think the floor would be raised a lot. Mr. Mattson asked if the grade would be changed anywhere where the building height was calculated from. Mr. Chagnon said the ordinance was revised so that the average plan grade is calculated from existing ground, and if the applicant changed the grade, it wouldn't change the calculation of building height. He said there would be grade changes along the Rockland Street side and some changes were proposed with some landscape walls that would align the grade to the grade at the entrance to make it all one grade.

Mr. Rheume said the public and the Board were concerned that the applicant was somehow building a mound and then building on top and saying it was only 35 feet high. Mr. Chagnon said everything was related to the height of all the structures and that it was related back to the average grade so that they were not exceeding the requirements from the calculated average existing grade. He said the patio in the back was a different measurement and less than 18 inches above the ground, and once it was 18 inches higher it would become a structure, which was the reason it was included

previously, but it had been lowered. Attorney Kaiser further explained the measurement rules that required measuring the grade at various points around the existing building and then averaging it into a calculation called the average existing grade. She said the building wasn't a 5,000 sf building and that the existing home was a 2-1/2 story, not a one story. She said the main structure was 1,075 square feet but didn't know what the figure would be post construction. Chair Eldridge said if the applicant knew the building footprint, they should be able to figure it out. The owner Peter Smith explained that it wasn't just the footprint times 3 because there was an inset on the first floor, and the third floor had a large deck that cut into the square footage.

Vice-Chair Margeson asked Ms. Harris if building the driveway off Rockland Street would go before the Technical Advisory Committee. Ms. Harris said the applicant had to get permission from the Department of Public Works for a driveway permit, but that the right-of-way existed for them to connect. Vice-Chair Margeson asked the applicant if they were raising the grade of the building. Mr. Chagnon agreed and said there were some grade changes associated with the construction along Rockland Street to make it flat around the front of the house. He said the patio would be raised to make it flat because it was a slope, but it would be no more than 18 inches. Attorney Kaiser said the measurement wasn't from that changed grade. Mr. Rossi asked about the patio. Ms. Kaiser said it was the same. Mr. Rossi concluded that the change in grade was not what took the patio out from the lot coverage. Mr. Chagnon said the patio was now no more than 18 inches above the existing grade and it wasn't a structure, and that the patio was lowered but it wasn't because of a change in grade. Attorney Kaiser said they decreased the amount of open space but were still twelve percent above the minimum open space requirement and the building coverage was fully compliant.

Dave Mikolaities of 19 Kent Street said insufficient plans were provided to the Board. He said the new building footprint totaled 1,232 square feet.

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

## **DISCUSSION OF THE BOARD**

Mr. Mattson said he previously voted to deny the application and that a lot of it was due to the abutting neighbor who was the most affected. He said he believed that a lot of those changes and the criteria had been addressed. He said he preferred more information but felt that the application was sufficient and everything that the Planning Department required was submitted. He said the complex architectural drawings required some interpretation but the information was in the packet. He said the Board addressing the criterion of altering the essential characteristics should be regarding the use and not the look of the building. Mr. Rossi said the Board was considering what they deemed to be a new application, and whether it was superior or inferior to the old one wasn't part of their consideration. He asked if a variance was needed at all because it was a preexisting nonconforming use. He said there was an expansion of the nonconforming use over the last six months, which was something the Board could approve or not. He said he was frustrated by not being able to get a direct answer from the applicant to the simple question of what the square footage of the living space in the current structure was and what it would be in the new one. He said all he knew now was that the new structure is substantially a more nonconforming use than whatever it was before to 3,300-4,000 square feet. He said several of the public's comments

resonated with him because of his experience of living at the Jersey Shore and watching the character of those beach neighborhoods change because everyone who bought the quaint cabins to be by the shore tore them down and maxed out everything they could do on those lots. He said there was a similar concern in Portsmouth and prices were skyrocketing. He said the proposed project not only expanded the nonconforming use but did so in a manner inconsistent with the essential character of the neighborhood, and he would not support it. Mr. Rheume said the Board could continue the application if they felt that they needed more information and time to think about it. Vice-Chair Margeson agreed and said she also wanted to see renderings.

## **DECISION OF THE BOARD**

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

Mr. Mannle said the applicant had to fail only one criterion and that it failed Section 10.233.21 of the ordinance because it was contrary to the public interest, considering the size of the proposed structure which would be four stories or 3.5 or three, depending on where the median variance height was measured. He said more information from the applicant would have been better but it wasn't presented, and if the Board granted the variances as presented, it would be contrary to the public interest. Mr. Rossi concurred and said the application also failed the criterion of not affecting surrounding property values. He said the structure was massive, no matter how it was measured, and the expansion of the nonconforming use and the massive structure associated with it would have a deleterious impact on the values of surrounding properties. Chair Eldridge said she would not support the motion because she preferred to continue it and have some of her questions answered and see the building in context. Mr. Rheume said he would also not support the motion. Mr. Mannle said the applicant could have submitted the necessary information, especially considering that the previous application had architectural renderings.

*The motion to deny **failed** by a vote of 5-2, with Mr. Mannle and Mr. Rossi voting in favor of the motion.*

*Vice-Chair Margeson moved to **continue** the application to the September 19 meeting, seconded by Mr. Mattson.*

Vice-Chair Margeson said the Board needed more answers and a fuller application packet. Mr. Mattson concurred and had nothing to add. *The motion **passed** unanimously, 7-0.*

- E. REQUEST TO POSTPONE** The request of **Caleb E. Ginsberg and Samantha L. Ginsberg (Owners)**, for property located at **303 Bartlett Street** whereas relief is needed to demolish the existing detached garage and construct an addition with attached garage which requires a Variance from Section 10.521 to allow a) seven (7) foot left yard where ten (10) feet is required, and b) two (2) foot right yard where ten (10) feet are required. Said property is located on Assessor Map 162 Lot 13 and lies within the General Residence A (GRA) District. **REQUEST TO POSTPONE (LU-23-120)**

**DECISION OF THE BOARD**

The application was postponed to the September 19 meeting.

**II. OTHER BUSINESS**

There was no other business.

**III. ADJOURNMENT**

The meeting adjourned at 11:40 p.m.

Respectfully submitted,

Joann Breault  
BOA Recording Secretary