

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

**7:00 P.M.**

**September 19, 2023**

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

**MEMBERS EXCUSED:** None.

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

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Chair Eldridge asked for motions to take Items D through F of Section III, New Business, out of order and to postpone them.

*Mr. Rossi moved to take Section III, Items D through F out of order, seconded by Mr. Mannle. The motion **passed** unanimously, 7-0.*

*Mr. Rossi moved to **postpone** Items D through F of Section III, New Business, to the September 26 meeting. Mr. Mannle seconded. The motion **passed** unanimously, 7-0.*

**I. APPROVAL OF MINUTES**

**A. Approval of the August 15, 2023 minutes.**

Mr. Mattson asked that the phrase on Page 12, first paragraph, 5<sup>th</sup> sentence from the bottom be changed from “he said it was spot zoning” to “he said it was similar to spot zoning”.

*Mr. Mannle moved to **approve** the August 15 minutes as amended, seconded by Mr. Rossi. The motion **passed** unanimously, 7-0, with Alternate Geffert abstaining from the vote.*

**B. Approval of the August 22, 2023 minutes**

Mr. Mattson requested that the last sentence of the second-to-last paragraph on page 8 be changed from “he noted that the penthouse would not be visible to the other setbacks” to “he noted that the penthouse would be less visible due to the setbacks”.

*Mr. Mannle moved to **approve** the August 22 minutes as amended, seconded by Mr. Rossi. The motion **passed** unanimously, 7-0, with Alternate Geffert abstaining from the vote.*

## II. OLD BUSINESS

- A. 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)**

Alternate Geffert was seated for voting.

### DECISION OF THE BOARD

*Mr. Rheaume moved to **grant** the request to postpone for one month until the October 17, 2023 meeting, seconded by Mr. Mannle.*

Mr. Rheaume noted that the Board already postponed it once, but there were concerns from the nearby property owner and the applicant was working hard to address those concerns.

Vice Chair Margeson confirmed with City Staff that the application would be re-noticed before the application could be heard.

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

- B.** 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) This item was continued from the August 22, 2023 meeting to request more information from the applicant.

Chair Eldridge said the rules needed to be suspended to open the public hearing.

*Mr. Rheaume moved to **reopen** the public hearing, seconded by Mr. Mannle.*

Mr. Rheume said the Board had prior deliberation on the petition but it was a complicated case and there was some lack of clarity, so the postponement was made to give the application the opportunity to get more information and the Board also wanted to hear more from the public.

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

*Mr. Rossi moved to accept the new information and hear the presentation from the applicant, seconded by Mr. Mannle. The motion **passed** unanimously, 7-0.*

## **SPEAKING TO THE PETITION**

Attorney Tim Phoenix was present on behalf of the applicant, with the owners Peter and Cynthia Smith, Attorney Monica Kaiser, project designer Jennifer Ramsey, landscape architect Robbie Woodburn, and project engineer John Chagnon via Zoom. Attorney Phoenix asked for an additional five minutes for his presentation.

*Mr. Mannle moved to **grant** the additional five minutes, seconded by Mr. Rossi. The motion **passed** unanimously, 7-0.*

Attorney Phoenix said the petition was continued from the August 22 meeting and there were several new exhibits relating to requests from the Board for answers to certain questions. He addressed those questions, which related to the height as defined by the zoning ordinance of the structure to be demolished; the height defined by the zoning ordinance of the proposed building; the exemption of the spa from the setback requirements; how the garage would be built; whether the application proposed to use City property to a greater degree than other residents; what the interior square footage of the proposed residence was; a survey plan showing the building envelope, a two-scale streetscape; and the overall design scale and compatibility. [Recording timestamp 9:52]

Chair Eldridge opened the public hearing.

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

Adam George of 134 Lincoln Avenue said the neighborhood had seen a surge of renovations, extensions, and modern projects and the owners went back to the drawing board to address the neighbors' concerns. He asked that the revised proposal be approved.

Kevin O'Connell of 140 Elwyn Avenue said the owners complied with the request for a conforming home, yet a motion was made to deny the request. He said homeowners should not have to wonder if their complying plans will be denied by the Board. He said the petition should be approved.

Jessica Kaiser of 30 Spring Street said the owners developed a structure that was in full compliance with the zoning ordinance and the only remaining challenge was the lot. She said almost every lot in the neighborhood faced the same challenge. She reviewed the criteria and said they would be met.

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

The abutter David Mikolaities of 19 Kent Street explained all the reasons he thought that nothing changed from the earlier submittal. He reviewed the criteria in detail and said there was no hardship. [Timestamp 43:54]

Jim Lee of 520 Sagamore Avenue said the petition had to fail only one criterion and that it failed the hardship one. He said tearing down the building and replacing it with another one would be an unreasonable use and was the type of thing that drove up the prices of houses in Portsmouth.

Bill Arakelian of 18 Kent Street said the proposed house's mass went beyond any of the examples of nearby homes shown by the applicant. He said one of the largest existing homes on Kent Street would be replaced with one that was 64 percent bigger. He said the cement wall, spa and patio should be included in the building coverage computation.

Cliff Hodgdon of 10 Kent Street said the proposed structure was still long, large, and tall and clashed with the surrounding character and the modern design was in sharp conflict with all the other homes and that there was no hardship. He said the photos of other homes were misleading.

Barbara Adams of 75 Kent Street said most of the houses shown in photos were not on Kent Street. She said the issues were the same as before and there was no hardship. She said the project would alter the essential character of the Kent Street neighborhood and approval would set a precedent for other people to buy small lots and develop them to the maximum.

Esther Kennedy of 41 Pickering Avenue told the Board to do the right thing, noting that people gave them a good rationale of why the petition should be denied.

Rick Becksted of 1395 Islington Street said demolitions made land values rise, which contributed to the City's unaffordable real estate. He said the essential character of the neighborhood was also in the Board's guidelines and should be used to deny the application.

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

Jeff Hodges of 112 Lincoln Avenue (via Zoom) said the new design conformed with all the technical guidelines in the ordinance other than the lot size. He said allowing a property owner to build a fully conforming house was not contrary to the public interest. He said similar projects had been approved and that the proposal met all the criteria.

Erin Proulx of 99 Daniel Street (via Zoom) said she was in support of the application because it met all the guidelines and the only variance requested was for the nonconforming lot. She said the house wasn't in the Historic District and would enhance the values of surrounding properties.

Jessica Kaiser said the new plans were in compliance and design wasn't an issue. She said the variance request had nothing to do with the structure itself.

Attorney Phoenix said the spa was included in the 25 percent and the City Staff found that the applicant didn't need a variance for the spa or the patio. He said the stone enclosures did not apply

because the front was less than 18 inches and the rear was seen as a fence. He said it was not an expansion of a nonconforming use but for a nonconforming lot. He said the hardship was that the lot cannot be fixed and has special conditions of being located on a corner with an open area behind it and next to it. He said it would not violate the public interest or diminish property values and that the only applicable requirement was the need for a variance due to the size of the lot.

Cliff Hodgdon of 10 Kent Street said all accessory structures should be included in the building coverage, including the spa. He said it wasn't shown in the proposal. He said the front walls were referenced in the proposal as landscaped walls and the side and back walls as fence walls and that they should all be considered structures.

Project landscape architect Robbie Woodburn said at the bottom of the steps of the rear yard patio, the spot grade was 28.8 inches and the patio pitched to the east toward the fence, so it was lower in that corner. She said it wasn't higher than 18 inches. She cited more grades and said the 6-ft wall would be measured from existing grade and would qualify as a fence. She said the wall/fence along the front and sides would not be higher than four feet and the spa was included in the calculations.

Cliff Hodgdon of 10 Kent Street asked who would pay for digging the drainage trench through the park and to the tennis courts, noting that it wasn't on the proposal previously.

Attorney Phoenix said the drainage calculations were provided previously but the applicant was decreasing the impervious coverage, which would create more lot for drainage. He said the drainage would have areas for treatment but wasn't really the Board's purview.

Chair Eldridge closed the public comment session but kept the public hearing open in case there were questions from the Board.

Mr. Rossi said it wasn't a complicated application because the Board was there to consider the lot size, but there was the issue of the essential character of the neighborhood and whether the structure would be consistent with it. Attorney Phoenix said the essential character of the neighborhood, along with each of the other variance requirements, related to the variance needed and not the project that was being done, so the issue was whether the lot and the variance for it would change the essential character of the neighborhood, not the building.

Chair Eldridge closed the public hearing.

## **DISCUSSION OF THE BOARD**

Mr. Rossi said when he read the minutes from the previous meeting, he realized that his logic about the expansion of a nonconforming use was incorrect, so now his position changed because he agreed with Attorney Phoenix's logic and felt that it was more compelling than what he was thinking at the previous meeting. Mr. Mattson said there were more variances requested before and he had not seen an unnecessary hardship within the side yard setback, but since it was no longer asked for, the only thing left was whether the lot size was an unnecessary hardship, and he said the applicant could not change the lot size. Vice-Chair Margeson said she did not find Attorney

Phoenix's view of the essential character of the locale so narrowly and wasn't sure that by granting the variances, the Board was not violating the spirit and intent of the ordinance in terms of the central character of the locality. However, she said in almost all respects, the application improved the conformity with the zoning ordinance in terms of the right and rear yard setbacks, and the building coverage was decreased to meet the zoning ordinance. She said it was tough but thought there might be a problem with the spirit and intent, not with air and light.

Mr. Rheume said it came back to what was relevant to the Board. He said traditionally a request of this sort was, "Is this a buildable lot?". He said other lots in the neighborhood had buildings placed on them, but other aspects of the petition poked at other issues, like demolition. He said he was disheartened by the trend of demolition across the City. He said the value of the land was of greater intrinsic value to someone who wants to buy the land than the structure on it, which would change the characteristics of the City, but it wasn't something the Board had purview over. He said there was the Demolition Committee but that it was very limited in its powers. He said a homebuyer could do what he wanted to with a house outside the Historic District. He said the issue of property values needed to be legislatively looked at and might require State action but it wasn't applicable to what the Board was reviewing. He said the essential character of the neighborhood was tied to the actual relief asked for, and the question was whether the lot was buildable. He said the Board could say there were much smaller homes on the smaller lots and that the applicant's home had to be in conformance with a lower standard than the ordinance would require, but there were other buildings in the neighborhood that were very close to the applicant's building. He said the dormering on the park side was appropriate but the one on the other side but a bit much, but the applicant was building within the allowed envelope. Regarding the fence and the spa, he said the Board would approve the allowable 25 percent and that it was up to the applicant to figure out if that as missed for the fence and spa. He said he didn't think there was enough to say that the application didn't meet the essential character of the neighborhood in terms of the zoning relief being asked for.

Mr. Rossi said he had seen that phenomena of the land in New Jersey, especially along the shore where property became more valuable than the homes built there decades ago. He said the nature of the housing stock in Portsmouth will change unless there are changes made to the zoning ordinance itself to prevent that, but it was outside of the Board's purview.

## **DECISION OF THE BOARD**

*Mr. Rheume moved to **grant** the variance for the petition as presented and advertised, seconded by Ms. Geffert.*

Mr. Rheume referred to his previous comments. He said he had a lot of empathy for the neighbors but there was always a tradeoff between the needs of the property owner and the neighborhood. He said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said he explained the essential character of the neighborhood specific to what was asked for relief and that the applicant was meeting that aspect. He said there were a lot of large structures on the substandard 5,000-sf lots in the neighborhood, some of them with high roof lines and with dormers, particular placement of windows and so on, and he said the Board couldn't go that far. He said substantial justice would be done, which was a balancing test specific to what's

being asked for in terms of whether the lot is a buildable one. He said the applicant demonstrated what was currently there and what was available on similar lots throughout the neighborhood and what was asked for fell in the balance and was something granted to many others in the past. He said he didn't think there were other substantial characteristics put forward relating to competing concerns that outweighed the fundamental right to develop a property in conformance with the ordinance. He said granting the variance would not diminish the values of surrounding properties, noting that the structure was replacing a 2-family home and losing some dwelling units but would be a more conforming building that would not have a different use, and a single-family residence was allowed in the area. He said it was doubtful that it would diminish the values. He said literal enforcement of the ordinance would result in unnecessary hardship. He said the question being asked was regarding if the lot was buildable. Numerous lots in the neighborhood were of a similar substandard size because the original subdivision was set up that way. He said the property has a structure on it for many years and what was proposed was fully conforming on a lot that was a characteristic size of the neighborhood, even though it was somewhat below the requirements of the zoning applied in general to the neighborhood. He said there was no general public purpose of the ordinance that said this specific home should not be built. He agreed that the owner was maxing out the height, especially on the side approaching the neighbors, but there wasn't enough to say that it was out of the nature of other uses on the 5,000-sf lots on other properties in the area and throughout the City. He said it was reasonable and recommended approval.

Ms. Geffert said there was ample evidence that granting the variance would not diminish the values of surrounding properties. Chair Eldridge said she would support the motion because the land was the hardship and the applicant decided to build up to the required dimensions.

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

- C. 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; b) a two (2) foot right yard where ten (10) feet is required; c) building coverage of 27.5% where 25% is allowed; 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 162 Lot 13 and lies within the General Residence A (GRA) District. (LU-23-120)

## **SPEAKING TO THE PETITION**

Attorney Monica Kaiser was present on behalf of the applicant, along with the owner Samantha Ginsberg, the direct abutters Peter and Donna Splaine, and project engineer Alex Ross. She noted that seven letters of support were received from the neighbors. She handed a written statement to the Board members and asked for an addition five minutes for her presentation.

*Vice Chair Margeson moved to grant the additional five minutes, seconded by Mr. Mattson. The motion **passed** unanimously, 7-0.*

[Timestamp 2:13:35] Attorney Kaiser reviewed the petition. She noted that the tax map showed the deeded property to be more than it really was and explained that the deed error was not noticed before. She said the plan was to adjust the property line to make the T-shape of the property go away and apportion parts of it to the two abutters.

Mr. Rossi asked if the addition was moving over to the right or would be in line of where the current garage was. Attorney Kaiser said the addition would move a bit, explaining that there was a little jog in the lot line before and the garage would slide up by adjusting the lot line. Mr. Rossi said the new lot line seemed strange with the little zigzag but knew that the lot line was changing to bring the building closer in conformance rather than the building changing to become more conforming. Attorney Kaiser said the parties involved explored different ways of doing it and were comfortable with the proposed plan and that the Planning Board would evaluate the lot line. Vice-Chair Margeson said the left yard was seven feet the entire way but not in the beginning, and she asked how that seven feet was right at the front of Bartlett Street. Attorney Kaiser said the house was on an angle compared to the lot line, and the setback to the house was 3.6 feet, seven feet at the corner, and then 9.3 feet at the deck. She said the reason they were asking for the seven feet was because that's where they would fill in and attach to the existing house. Vice-Chair Margeson said the existing conditions stated that it was seven feet but it seemed like three feet. Attorney Kaiser said the three feet would not be expanded and the addition would be put in at the seven feet. Ms. Casella referred to the Staff Memo and clarified that the front portion of the house would not change. Mr. Mattson asked if the applicant considered turning the garage to have a bigger setback. Project engineer Mr. Ross said the turning radius would be too tight and there wouldn't be enough width. Mr. Rheume said it was more of a house addition with a small garage than a garage addition because the size of the addition was about the size of the original house. He said the applicant could have avoided coming before the Board if the lot line was drawn closer to the 295-299 Bartlett Street house and an easement for driving and parking on the property was processed, which would get the 10-ft setback. Attorney Kaiser said the Splaines could claim most of the T-shape because of the way they used and maintained it and it was a tough sell for them to give it up legally. Mr. Rheume asked if the applicant included any maintenance easement on the new addition on the Splaine side of the property as a legal basis for the applicant to do maintenance. Attorney Kaiser said all the parties were willing to do that. Mr. Rheume asked if the planter boxes behind the proposed addition were the basis for choosing the property line to go to that area. Attorney Kaiser 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. Rheume moved to **grant** the variances for the petition as presented and advertised, with the following **conditions**:*

- 1. A suitable maintenance easement shall be provided on the new lot being created, Lot 162-14, with its increase in size; and*

*The subdivision review and approval by the Planning Board shall be required for the proposed lot line adjustment Vice-Chair Margeson seconded the motion.*

Mr. Rheume said he was concerned at first as to why the Board didn't try to avoid the situation of creating a new property line and including a 2-ft setback on an addition that didn't exist yet. He said it was an important data point for the Board to say that they could live with it as long as some provision was put into the new agreement between the two new properties that there's a substantial structure that will be very close to the property line that will need maintenance and the owner of the 303 Bartlett Street side will properly maintain that. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance because there were tight property lines in that neighborhood. He said it might have seemed like an opportunity to create something more conforming, but there was a historic use of the two properties and the applicant was trying to recognize that *de facto* use of each of the properties. He said the two neighbors amicably worked out the result and understand the impacts, so he thought that reduced some of the concerns about the right setback, which he explained further [Timestamp 2:52:24]. He said there was nothing in the public interest that would outweigh the applicant's and neighbor's decision to run the property line where they did. He said substantial justice would be done because there was no public concern, just the one between the two neighboring properties. He said granting the variances would not diminish the values of surrounding properties because it defined something that was already in existence and the addition would be tasteful and add significantly to the size of the existing home, so it should increase its value and the value of other properties. He said the hardship was the undefined property line that was owned by someone else who didn't realize it and the historical usage, so two property owners were coming up with a solution to meet everyone's needs. He said the addition was a reasonable one, considering the very small size of the existing house. He said there was already a garage and the new one would be moved under the addition. He said there was nothing in the petition that was unreasonable, and he recommended approval. Vice-Chair Margeson concurred and commended the applicant for the thorough application and said it was a good example of negotiating differences with the abutters and coming to an agreement.

Mr. Mattson said what convinced him to approve the petition was the 37'x42' wide lot, which was narrow and drove a lot of the issues. He said that, even with the increased land that would result from the proposed lot line revision, it would still be smaller than what was allowed. He said he would normally be hesitant about approving something so close to the side yard setback, but given the nature of the property and the agreement reached between the neighbors, he was convinced. Mr. Rheume added that the lot coverage was just 2-1/2 percent over and less than what existed in terms of all the other structures being removed to allow the addition, which was not egregious.

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

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

Alternate Geffert took a voting seat for the following petition.

- A.** The request of **J & J's Drop and Drive LLC (Owner)** for property located at **459 Islington Street** whereas relief is needed to install a 54 square foot mural which requires the following: 1) Variance from Section 10.1251.10 to allow 54 square feet of aggregate sign area where 48.5 is allowed; and 2) Variance from Section 10.1251.20 to allow 54 square feet of individual sign area where 16 square feet is allowed. Said property is located on Assessor Map 157 Lot 7 and lies within the Character District 4-L2 (CD4-L2) and Historic District. (LU-23-129)

#### **SPEAKING TO THE PETITION**

Landscape architect and site artist Terrence Parker was present on behalf of Liar's Bench Brewery and J & J's Drop and Drive LLC, the brewery's landlord. He said the mural was part of the History Through Art project in the City. He said the variances from the sign ordinance were needed due to the special exceptions of the brewery, the dimensional requirements that were exceeded, and the fact that the west side of the brewery had no street frontage so the mural had to be on that side, which faced the parking lot and bank drive-thru. He reviewed the criteria.

Mr. Rossi asked why the applicant was asking for 54 square feet of aggregate sign area instead of the allowed 48.5 square feet. Mr. Parker said the mural was designed to meet the open space of the portion between the side entrance and one of the garage doors. He said it was aesthetic decision to create a boundary of blue around the mural and that the mural had to be large enough to be read due to its historic graphics and text. Mr. Rossi asked about the durability of the vinyl print fixed to an aluminum sheet. Mr. Parker said it would be solar-sealed onto the aluminum backing and would have a 12-year life span.

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. Rheume said he wished the ordinance would better reflect the idea of public art of that large of a magnitude being displayed and put it in the sign ordinance even though it wasn't a sign. He said in this case, it was completely divorced from anything taking place inside the business, and if the Board had to apply the sign ordinance to it, that would be the hardship. He said the mural was a reasonably-sized piece of art work and in a parking lot that would not distract drivers. Vice-Chair Margeson said she would not support the petition. She said the concept was great but thought putting the request within the sign ordinance was tricky. She asked what would happen if the Board

got a request from a business that wanted to go larger. She said one standard was applied for a public art mural and another for businesses and hoped that the City Council would consider passing a public art mural ordinance to allow these things, but she didn't feel the variance requests fit into the sign ordinance. Mr. Mattson said that, for similar reasons, he supported it because the hardship was that there was no fair and substantial relationship between the purpose of the sign ordinance and the mural that would protect from a situation of an actual sign advertising something for a business. He said he preferred that the issue be dealt with by the City Council and the ordinance itself but didn't think it set the Board up for a precedent. Mr. Rossi said the last time the Board approved a mural, they thought about it as possibly a public mural fitting into the definition of a museum, which is a permitted use in the CD4L1 District because it is art and for public access. He said because no one was charging for it and someone didn't have to walk inside a building, it was a hybrid use that a commercial signage would not benefit from.

## **DECISION OF THE BOARD**

*Ms. Geffert moved to **grant** the variances, seconded by Mr. Mattson.*

Ms. Geffert said granting the variances would not be contrary to the public interest because the variances requested were for a particular expansion, a tasteful mural, as part of the history project. She said it would observe the spirit of the ordinance because the ordinance did not want obnoxious signs and that the sign would not do a disservice to the area and would be better than advertising Liar's Bench. She said the applicant made a good case of why a larger sign was required. She said granting the variances would do substantial justice, given the location and the abutting uses and the absence of anyone protesting, and that it would advance the information presented on the sign. She said it would not diminish the values of surrounding properties because there was no evidence that it would and she thought it would enhance the values of surrounding properties. She said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because the property had special conditions of not fronting on Islington Street that distinguished it from other properties, and owing to those special conditions, a fair and substantial relationship does not exist between the public purposes of the sign ordinance and the application of that provision. She said the sign would be on the side of the building and would not create any traffic hazard or visual problems for anyone because it would face a bank drive-thru. She said all the criteria were satisfied. Mr. Mattson concurred and said the proposed use was a reasonable one that would not threaten public health, safety, or welfare.

*The motion **passed** by a vote of 6-1, with Vice-Chair Margeson voting in opposition to the motion.*

Mr. Rheume recused himself from the following petition, and both alternates Ms. Geffert and Ms. Record took voting seats.

- B.** The request of **Wayne G. Clough (Owner) and Sophary Sar (Applicant)**, for property located at **100 Islington Street Unit 6** whereas relief is needed to allow an esthetician business which requires a special exception from Section 10.440, Use # 7.20 where it is

permitted by Special Exception. Said property is located on Assessor Map 137 Lot 25-6 and lies within the Character District 4-L2 (CD4-L2) and Historic District. (LU-23-122)

### **SPEAKING TO THE PETITION**

The applicant Sophary Sar was present and said she was a licensed aesthetician. She said she would structure her appointments so that they would not overlap between clients. She reviewed the special exception criteria and said they would be met.

There were no questions from the Board. Chair Eldridge opened the public hearing.

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

Dick Gamester of 176 Dexter Road said he supported the application because it would not impinge on any of the special exception criteria and would be the least intensive use on the property.

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

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

### **DECISION OF THE BOARD**

*Mr. Mattson moved to **grant** the special exception for the petition, seconded by Mr. Mannle.*

Mr. Mattson referred to Section 10.233.21 and said the standards as provided by the ordinance for the particular use were permitted by special exception. He referred to Section 10.233.22 and said there would be no hazard to the public or adjacent properties on account of potential fire, explosion, or release of toxic materials because those were not an issue. Referring to Section 10.233.23, he said granting the special exception would pose no detriment to property values in the vicinity or change in the essential characteristics of any area including residential neighborhoods, business or industrial districts on account of the location and scale of buildings and other structures, parking areas, accessways, odors, smoke, gas, dust or other pollutants, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles, or other materials. He said it was a minimally impactful use with no exterior changes to the building. Referring to Section 10.233.24, he said granting the special exception would pose no creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity because there was adequate and reasonable parking and the applicant would base her appointment scheduling to handle the flow of visitors. Referring to Section 10.233.25, he said there would be no increase in or excessive demand on municipal services including but not limited to water, sewer, waste disposal, police and fire protection, and schools, given the nature of the business. Referring to Section 10.233.26, he said granting the special exception would pose no significant increase of stormwater runoff onto adjacent properties or streets because exterior changes in this case were not an issue. Mr. Mannle concurred and had nothing to add.

*The motion passed unanimously, 7-0.*

Mr. Rheume resumed his voting seat and Ms. Record resumed her alternate status.

- C. The request of **Davenport Inn LLC (Owner)**, for property located at **70 Court Street** whereas relief is needed for the following: 1) An after-the-fact Variance from Section 10.515.14 for six (6) existing permitted mechanical units with a setback of 0.5 feet from the property line; 2) Variance from Section 10.515.14 to install a seventh mechanical unit with a setback of 0.5 feet from the property line whereas 10 feet is required; and, in the alternative; 3) Equitable Waiver from Section 10.515.14 for the installation of six mechanical units with a 0.5 side yard setback. Said property is located on Assessor Map 116 Lot 49 and lies within the Character District 4-L1 (CD4-L1) and Historic District. (LU-22-10)

### **SPEAKING TO THE PETITION**

Attorney Chris Mulligan was present on behalf of the applicant, along with Andrew Samonas, one of the principals of Davenport Inn LLC. Attorney Mulligan said the petition was before the Board the previous year to allow the use as an inn and for dimensional variances. He said the applicant had to upgrade the various mechanical systems including the HVAC system as part of the property's renovation and restoration and obtained an administrative approval to site and install a bank of HVAC units to support mini-splits on the left side yard. He said his client had the units installed but was informed by the installer that a seventh unit was necessary, which was installed, so when the client went before the HDC for another administrative approval, he learned that a variance was required for all seven units because they were in the side yard setback. Attorney Mulligan said the requested variances were needed to permit the currently installed units to stay where they were, and if it wasn't granted, he would ask for an equitable waiver from the dimensional requirements. He said the setback was impossible to meet unless all the units were sited behind the building, which would be expensive and inappropriate. He said the area they needed approval for siting the units was the space between the two buildings. He said that space was not usable for any other purpose and the light and air between the buildings would not be affected. He reviewed the criteria.

Mr. Rossi asked if all seven units were installed. Attorney Mulligan agreed, noting that the first six units were installed before anyone realized that a variance was needed and the seventh unit was installed before the applicant applied for an administrative approval. Mr. Rheume said there were two prior condensers along the side of the building. Attorney Mulligan agreed and said the photos showing them were part of the submission to the HDC. He said those two units were gone. Mr. Rheume asked if the applicant and the City Staff discovered that there was a variance granted for those two units. Attorney Mulligan said they did not but it was possible that there should have been. Mr. Rheume asked if the installer indicated a technical reason that moving the HVAC equipment behind the building would be an issue, like pipe runs. Attorney Mulligan 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**

The Board discussed the issue of dealing with the petition as a variance request instead of an equitable waiver one and decided to grant the variances.

*Vice-Chair Margeson moved to **grant** the variances for the six condensers after the fact and for the seventh to be installed. seconded by Mr. Mattson.*

Vice-Chair Margeson referred to Sections 10.233.21 and .22 of the ordinance and said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance because it would not alter the essential character of the neighborhood and would not affect the public's health, safety, and welfare. She said the issue was the setback requirements for the left yard and the movement of air and light around the building, and that the Board found that the location of the HVAC units did not implicate those concerns. She referred to Section 10.233.23 and said granting the variances would do substantial justice because there would be no benefit to the public in denying the variance request and it would be a tremendous injustice to the applicant. Referring to Section 10.233.24, she said granting the variances would not diminish the values of surrounding properties because the seven HVAC units were in-between buildings. Referring to Section 10.233.24, she said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. She said the property had special conditions that distinguished it from others in the area, and owing to those special conditions, a fair and substantial relationship did not exist between the general public purposes of the ordinance's provision and the specific application of that provision to the property. She said the proposed use was a reasonable one because HVAC systems would be provided to an approved inn within the Historic District and the special conditions of the property were that it was a very historic one. She said the applicant's representative stated that there would be problems installing HVAC units in the back of the inn, so she found that the property did have special conditions that do not relate to the public purpose of the ordinance as applied to the property. Mr. Mattson concurred and said the units could not be placed on the other side or the front, so there was no other location.

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

### **THE FOLLOWING ITEMS WILL BE HEARD ON TUESDAY, SEPTEMBER 26, 2023**

- D.** The request of **Marcella F. Hoekstra (Owner)**, for property located at **35 Whipple Court** whereas relief is needed in the form of an equitable waiver for 1) an accessory structure with an 8.5-foot right yard where 10 feet was permitted and an 8-foot rear yard where 17 feet was permitted; or in the alternative 2.a) Variance from Section 10.521 to allow an 8,324 SF lot area/dwelling unit where 15,000 SF is required; b) to allow a frontage of 45.83 feet where 100 feet is required; c) to allow an accessory structure with an 8.5 foot right yard where 10 feet is required; d) to allow an accessory structure with an 8 foot rear yard where 9 feet is required; and e) to allow a building coverage of 26%

where 20% is allowed. Said property is located on Assessor Map 260 Lot 98 and lies within the Single Residence B (SRB) District. (LU-23-147)

- E. The request of **Lawrence Brewer (Owner)**, for property located at **253 Broad Street** whereas relief is needed to construct an attached garage and add a second driveway, which requires the following: 1) Variance from Section 10.521 to allow a 7 foot side setback where 10 feet is required; and 2) Variance from Section 10.1114.31 to allow more than one driveway per lot. Said property is located on Assessor Map 131 Lot 16 and lies within the General Residence A (GRA) District (LU-23-148)
  
- F. The request of **Prospect North (Owner)**, for property located at **815 Lafayette Road** whereas relief is needed for the demolition of the existing building and tower and the construction of three 4-story, 24-unit multi-family buildings (72 total units) with first floor parking and associated site improvements, which requires the following: 1) Variance from Section 10.5B33.20 (Front Build-out) to permit a front build out of less than 50% of the total front yard width; and 2) Variance from Section 10.5B33.30 (Façade Orientation) to permit a façade orientation that is not parallel with the front property line. Said property is located on Assessor Map 245 Lot 3 and lies within the Gateway Corridor (G1) District and the FEMA 100yr flood and extended flood hazard area. (LU-23-149)

*It was moved, seconded, and approved to **postpone** the above three items to the September 26 meeting.*

#### **IV. OTHER BUSINESS**

There was no other business.

#### **V. ADJOURNMENT**

The meeting adjourned at 10:48 p.m.

Respectfully submitted,

Joann Breault  
BOA Recording Secretary