

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

7:00 P.M.

November 21, 2023

MEMBERS PRESENT: Phyllis Eldridge, Chair; Beth Margeson, Vice Chair; Members Paul Mannle, Jeffrey Mattson; Alternate Jody Record

MEMBERS EXCUSED: David Rheume, Thomas Rossi, and Alternate ML Geffert

ALSO PRESENT: Stefanie Casella, Planning Department; Trevor McCourt, Deputy City Attorney

Chair Eldridge called the meeting to order at 7:00 p.m.

I. PRESENTATION

A. Presentation by City Legal Department on Demolition Ordinance

[Timestamp 4:19] Deputy City Attorney Trevor McCourt was present to discuss the process of how demolitions are handled in Portsmouth. He said a property owner must first apply for a demolition permit that would allow the City Staff to give further direction depending on the property's location. He said the permit would be reviewed by the Inspection Department, and if the property was in the Historic District, the demolition request would have to go before the Historic District Commission (HDC), who had their criteria that determined whether a building merited demolition. He said if the property wasn't in the Historic District, the City had no authority to prevent a demolition, but the property owner would go before the Board of Adjustment or the Planning Board for a public hearing. If the project did not involve those approvals, then the Demolition Review Committee could delay the demolition and have a public hearing so that Portsmouth citizens could voice their opinions and try to convince the property owners to make a different decision. He said decisions made by the BOA or the Planning Board were appealable but their criteria were not appealable. He said the Demolition Review Committee's decision was not appealable because it resulted in a recommendation, not a decision.

Mr. Mannle said his comments at the Board's previous meeting were taken out of context by the Portsmouth Herald, which prompted the complaint, but he said the Legal Department had no problem with his comments. Attorney McCourt said what prompted the presentation was the broader context of what Mr. Mannle said and the demolition and appeal process. He said the purpose of his presentation was to bring some knowledge and broader context about the demolition

process to the Board to reflect upon. Mr. Mannle said he felt that it was the edited comment taken out of context by the newspaper that was the issue. Attorney McCourt said the BOA was tasked with working through their criteria, and the decision before the Board wasn't whether any buildings could be demolished outside the Historic District. Vice-Chair Margeson referred to the Cabot Street house petition in which the demolition of the building was the result of the variances and said there were times that if the Board didn't approve the variances, the building would not be demolished. She said the issue of demolition wasn't really before the Board at that time, but as a result of granting the variances, the building would be demolished. She said the Board's decision on the variance criteria could or could not result in the demolition of a building. Attorney McCourt said that came up all the time and that the BOA's decision may determine whether a property owner would choose to demolish their building, or whether they could make some other use of their property without the existing structure, or if it could be more economical to rehabilitate the existing building. He said it was the criteria that had to be worked through.

Mr. Mattson asked if the State dictated whether a property owner outside of the Historic District had the right to demolish a building. Attorney McCourt said the BOA was a creature of statute and their powers were conferred upon them by the State. He said the City had the ability to review demolition in limited circumstances, provided specifically by statute, and they had not availed themselves of options outside of the Historic District. He said the City was considering several ideas on how to modify that and that it would be discussed at a later date.

Mr. Mannle noted that the legal notice for the Cabot Street petition did not mention a demolition, so the public and abutters didn't know about it. Attorney McCourt said the City and the Planning Department said they would do a better job of providing public notice when a demolition is part of a BOA or Planning Board application. Ms. Record asked what authority the Demolition Review Committee had if the City had no authority to make residents preserve their buildings. Attorney McCourt said the Demolition Review Committee's purpose was to create a brief delay of up to 90 days for a building's demolition and to provide a public forum where citizens could discuss the demolition and make recommendations to the property owner on how to preserve it, and when the delay period ended, the demolition permit would be issued and the building would be demolished.

II. APPROVAL OF MINUTES

A. Approval of the October 17, 2023 minutes.

Vice-Chair Margeson asked that the first sentence in the first full paragraph on page 16 related to the motion for the 337 Richards Avenue petition be changed to reflect that she did not support the motion due to her concern about the addition in massing on the side of the house, and not because the structure was larger than the house itself as stated.

*Mr. Mannle moved to **approve** the October 17 minutes as amended, seconded by Mr. Mattson. The motion **passed** unanimously, 5-0.*

III. OLD BUSINESS

A. **9 Kent Street** - Request for Rehearing (LU-23-176)

*Vice-Chair Margeson moved to **suspend** the rules so that the Board could discuss postponing the application. Mr. Mattson seconded.*

Vice-Chair Margeson said the application was a contentious and difficult one when it went before the Board and required a lot of thought and care from several Board members, and she thought a request for rehearing required the same deliberation from a full Board. She said the Board should postpone the request for rehearing to the December 19 meeting.

*The motion to suspend the rules **passed** unanimously, 5-0.*

*Mr. Mannle then moved to **postpone** the Request for Rehearing to the December 19, 2023 meeting, seconded by Ms. Record. The motion **passed** unanimously, 5-0.*

IV. NEW BUSINESS

- A. REQUEST TO POSTPONE** The request of **Jeff and Rhonda Caron (Owners)**, for property located at **1 Garden Street** whereas relief is needed to construct an addition to the existing detached garage and create a second living unit on the property which requires the following: 1) Variance from Section 10.516.10 to allow a two (2) foot front yard where five and a half (5.5) feet is required; 2) Variance from Section 10.513 to allow two (2) free standing dwelling units where one (1) is allowed; and 3) 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 174 Lot 11 and lies within the General Residence A (GRA) District. **REQUEST TO POSTPONE** (LU-23-139)

DECISION OF THE BOARD

*Mr. Mannle moved to **postpone** the petition to the December 19 meeting, seconded by Mr. Mattson. The motion **passed** unanimously, 5-0.*

- B.** The request of **Ashley Stearns/Blush LLC (applicant)**, and **Joan T. Jones Revocable Trust (Owner)**, for property located at **51 Islington Street, Unit 103** 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 126 Lot 33-103 and lies within the Character District 4-L2 (CD4-L2) and Historic District. (LU-23-184)

SPEAKING TO THE PETITION

The applicant Ashley Stearns of 408 The Hill was present to speak to the petition. She said she wanted to open a new location for her massage and aesthetics business that would have two or three treatment rooms and a reception area. She said she received approval from the condominium association. She reviewed the special exception criteria and said they would be met.

Mr. Mannle asked Ms. Stearns if she planned to get a parking pass to park in the Foundry Place Garage. Ms. Stearns said she would still be renting at 408 The Hill and would retain that parking, but her staff would get parking passes. Vice-Chair Margeson asked how many staff Ms. Stearns would have. Ms. Stearns said she would hire seven staff members, so there would be a total of eight including herself. Vice-Chair Margeson asked how many clients would be served at one time, and Ms. Stearns said there would be three clients served at the same time.

Chair Eldridge opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

No one spoke.

SPEAKING IN OPPOSITION TO THE PETITION

No one spoke.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Elizabeth Bratter of 159 McDonough Street said the Islington Creek neighborhood was already saturated with cars and residents had difficulty finding parking spaces for several reasons. She said the applicant's business would need 8-11 parking spaces due to the staffing. She said some of the grandfathered-in small businesses on Islington Street were finding it difficult for their customers to find parking. She asked that the Board not approve the special exception until on-site parking was demonstrated and that the Board also ensure that the applicant's employees would not park in the neighborhood. She suggested that the owner provide her clients with discounts for parking in the Foundry Place Garage. She referred to the options in her submitted letter to the Board and asked the Board to consider them as stipulations.

Joe Leddy of Duston Leddy Real Estate said he represented Ms. Stearns and was in favor of the petition. He said Ms. Stearns would do what she could to blend in with the community.

Robin Husslage of 27 Rock Street said she was concerned about traffic safety and congestion. She said the special exception for Unit 3 stated that there are three Islington Street parking spaces in front of the building assigned to the building, but she found that those spaces were not specifically assigned to Unit 3 and that there was only signage that indicated 2-hour parking. She said per code that 2-3 on-site parking spots were required. She noted that there was hardly any available parking on the two side streets and very few on Islington Street. She estimated that there would 10-12 staff

and clients who would need parking spots that were not available in the densely-populated neighborhood that currently didn't have enough parking for its residents.

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

DISCUSSION OF THE BOARD

Ms. Casella said the code had specific requirements about how many parking spaces were required per square foot of area within the unit being considered, and because of the way the condominium association chose to set up their parking, they had not designated any specific off-street parking for Unit 3. She said the code did not require that those spots be assigned but just provided on site, which had been done by the condo association. She said the City did not require any parking increase because what was there before was an increase in demand than what the applicant proposes, so it would be less intensive parking now.

Mr. Mattson confirmed that there were 32 total on-site parking spaces. Ms. Casella agreed. Vice-Chair Margeson asked if the applicant was being allocated one spot. Ms. Casella said the applicant didn't have any spaces assigned, according to the condo association, but the property had enough parking for the uses on site. Vice-Chair Margeson asked if anyone could use those spots. Ms. Casella said they were private spaces and that it was up to the condo association to choose how they would be allocated. She said the condo association only had to provide the adequate amount of spaces, which had been provided for the whole building.

DECISION OF THE BOARD

*Vice-Chair Margeson moved to **grant** the special exception as presented and advertised. Mr. Mannle seconded.*

Vice-Chair Margeson said a special exception was something the applicant could be granted if they demonstrated that they met all the criteria. She reviewed the special exception criteria and said the standards as provided by the ordinance for this particular use are permitted by special exception in the Character District 4L-2, and an aesthetician business is an allowed use per special exception. She said the applicant demonstrated that there will be no hazard to the public or adjacent properties on account of potential fire, explosions, or release of toxic materials. She said the applicant demonstrated that there would be no detriment to property values in the vicinity or change in the essential characteristics of any area including residential neighborhoods or business or industrial districts on account of the location or scale of buildings and other structures, parking areas, accessways, odor, smoke, gas, dust or other pollutants, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles, or other materials. She said the applicant demonstrated that there would be no creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity, given the calculation of the services offered and the length of those services. She said the applicant demonstrated that her business would have no excessive demand on municipal services including but not limited to water, sewer, waste disposal, police and fire

protection, and schools. She said the business would not create any significant increase of stormwater runoff onto adjacent properties and streets. She said all the criteria were met and the petition should be approved.

Mr. Mannle said the Board could not control what the clients of the applicant's business did, but he suggested a stipulation that the applicant and her employees park in the Foundry Place Garage so that the three spaces could be used by the clients. Chair Eldridge said Ms. Casella didn't think it would be consistent with the code. Chair Eldridge said the Board could recommend Mr. Mannle's suggestion but could not stipulate it. Ms. Casella said what was being asked for was a special exception for use and that there was a specific section of the zoning ordinance that spoke to parking and accounted for this specific situation. She said the proposed business and its uses were consistent with the ordinance and that she would be hesitant to place a stipulation that further restricted parking when the code's requirement was already being met.

Vice-Chair Margeson said she was sympathetic to parking concerns but pointed out that parking was not within the Board's purview and the petition met the zoning code. She said she would not accept Mr. Mannle's stipulation.

Mr. Mannle withdrew his seconding of the original motion. Mr. Mattson said he would second the amended motion because the proposed use required less intense parking than the previous use, and the building permit would assess the parking also.

The **amended** motion was as follows:

*Vice-Chair Margeson moved to **grant** the special exception as presented and advertised, seconded by Mr. Mattson. The motion **passed** by a vote of 4-1, with Mr. Mannle voting in opposition to the motion.*

V. OTHER BUSINESS

No other business was discussed.

VI. ADJOURNMENT

The meeting adjourned at 7:50 p.m.

Respectfully submitted,

Joann Breault
BOA Recording Secretary