

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

7:00 P.M.

January 23, 2024

MEMBERS PRESENT: Phyllis Eldridge, Chair; Beth Margeson, Vice Chair; David Rheume; Thomas Rossi; Jeffrey Mattson; ML Geffert, Alternate

MEMBERS EXCUSED: Paul Mannle; Jody Record, Alternate

ALSO PRESENT: Stefanie Casella, Planning Department

Chair Eldridge called the meeting to order at 7:05 p.m.

I. ELECTION OF OFFICERS

*Mr. Rossi moved to **re-elect** Ms. Eldridge as Chair, seconded by Ms. Geffert. The motion **passed** with all in favor.*

*Mr. Mattson moved to **re-elect** Ms. Margeson as Vice Chair, seconded by Mr. Rossi. The motion **passed** with all in favor.*

II. APPROVAL OF MINUTES

A. Approval of the December 19, 2023 minutes.

The Board made several amendments [timestamp 8:40]. Mr. Rheume said a sentence on page 3 needed further clarification. He asked that the following sentence: “Mr. Rheume said he made the original motion to deny it and moved to grant it the second time” be changed to “Mr. Rheume said he made the motion to deny the original application and then moved to grant the revised application.” In the sentence following that one, he asked that the term “present what was necessary relief the applicant needed to move forward” be changed to “the necessary relief the applicant needed to receive to move forward” so that the sentence now reads: “He said the project had pushed some limits and what came before the Board was interpreted by the Planning Department staff, who he had faith in to review the information and present the necessary relief the applicant needed to receive to move forward”. Mr. Rheume asked that the sentence (on page 9) that read: “Mr. Rheume said the present application was more in conformance and the nature of the variance requests was much less imposing” have the term ‘than the initial application’ added to the end of it so that the sentence now reads: “Mr. Rheume said the present application was more in conformance and the nature of the variance requests was much less imposing than the initial

application”. Ms. Geffert asked that the word ‘zoning’ be added after the word ‘area’ so that the sentence (on page 9) now reads: “She said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because the property had special conditions by being MRB zoned, and given the zoning of the surrounding area, it made the property special and distinguished it from others in the area, and a fair and substantial relationship did not exist between the public purposes of the area zoning and its application to the property”. Ms. Geffert asked that a sentence (on page 14) have the word ‘bulky’ replaced by ‘bulking’ so that it now reads: “She said that once the Fisher v. Dover issue was resolved, the requested variances are not contrary to the public interest because the public interest does not manifest and the zoning ordinance doesn’t deal with the bulking issue, and the public interest allowed for small dimensional setback items”.

Vice-Chair Margeson asked that a sentence on page 2 have the term “and should have four ZBA actions” added to it so that it now reads: “Vice-Chair Margeson said she disagreed because there was a presumption of reasonableness and lawfulness and should have four ZBA actions”. Vice-Chair Margeson asked that the sentence (on page 5) be changed so that the term “would be more” would say “should be more”, to read as follows: “Vice-Chair Margeson said she would not support the motion because the zoning ordinance was clear that there should not be more than one dwelling unit per lot”. Mr. Rossi said a sentence on page 7 should have the word ‘practical’ replaced by ‘impractical’ so that the sentence reads: “Mr. Rossi asked what the special condition of the property was that made it impractical to have the full allotment of the square footage required per unit”.

*Mr. Rossi moved to **approve** the December 19 minutes as amended, seconded by Mr. Rheume. The motion **passed** unanimously, 6-0.*

III. OLD BUSINESS

A. Mastoran Restaurants Inc. - 2255 Lafayette Road request a 1 Year Extension to the Variances granted on February 15, 2022. (LU-22-13)

*Vice-Chair Margeson moved to **grant** the request for extension, seconded by Ms. Geffert.*

Vice-Chair Margeson said the zoning ordinance allowed for a one-time, one-year extension when good cause was demonstrated by the applicant. She noted that the applicant was working with City Staff to satisfy the conditions of the approval of the Wetlands Conditional Use Permit and the site plan. She said the building permit had an issue and that the applicant anticipated starting in the spring of 2024, so she thought that was sufficient reason for an extension. Mr. Rheume said he was normally a voice for restraint in granting requests for extension, but in this case he thought it was the exact kind of project that the Board should grant additional time for because it had a lot of complexity and needed various approvals.

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

B. 168 Lincoln Avenue – Request for Rehearing (LU-23-196)

*Vice-Chair Margeson moved to **deny** the request for rehearing, seconded by Ms. Geffert.*

Vice-Chair Margeson said she voted against the application both times when it came before the Board. She said the request for rehearing was based on the Fisher v. Dover issue, which the Board had addressed at the beginning of the previous hearing. She said the majority of the Board said they did not think Fisher v. Dover was implicated, so she would vote not to rehear the petition.

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

At this point in the meeting, Chair Eldridge asked for a motion to take Item IV.D, 413 Lafayette Rd, out of order so that it could be postponed.

*Mr. Rheume moved to take Application IV.D, 413 Lafayette Rd, out of order, seconded by Mr. Mattson. The motion **passed** unanimously, 6-0.*

*Mr. Mattson moved to **postpone** the application to the February 20 meeting, seconded by Mr. Rheume.*

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

IV. NEW BUSINESS

- A.** The request of **Giri Portsmouth 505 Inc. (Owner)**, for property located at **505 US Route 1 Bypass** whereas relief is needed to demolish the existing structure and construct a new hotel with a drive-thru restaurant which requires the following: 1) Special Exception from 10.440 Use #10.40 hotel where it is permitted by Special Exception; 2) Variance from Section 10.1113.20 to allow parking spaces between the principal building and a street; 3) Variance from Section 10.1113.41 for parking located 1 foot from the lot line where 40 feet is required; 4) Variance from Section 10.575 to allow dumpsters to be located 1 foot from the lot line where 10 feet is required; 5) Variance from Section 10.835.32 to allow 1 foot between the lot line and drive-thru and bypass lanes where 30 feet is required for each; and 6) Variance from Section 10.835.31 to allow 37 feet between the menu and speaker board and the front lot line where 50 feet is required. Said property is located on Assessor Map 234 Lot 5 and lies within the General Business (GB) District. (LU-23-199)

SPEAKING TO THE PETITION

Attorney John Bosen was present on behalf of the applicant with the project team, which included representatives from Giri Hotels and site engineer Patrick Crimmins. He reviewed the petition, noting that they wanted to demolish the existing hotel and construct a 124-key hotel that would also have a drive-thru Starbucks [timestamp 21:19]. Mr. Crimmins reviewed the site plan [timestamp 22:47]. Attorney Bosen reviewed the special exception and variance criteria [timestamp 35:27].

Vice-Chair Margeson referred to the special exception and said the applicant's argument was that there were special conditions due to Hodgson Brook and the corner lot. She said the building was being reoriented toward Coakley Road and the Starbucks was being placed on the side of it, and that it seemed that the larger hotel and the Starbucks were driving the variance requests and not Hodgson Brook. Attorney Bosen said what made the site unique was the corner lot and the fact that they had limited room to work with, and making reasonable improvements in the brook dictated a certain program that they thought wouldn't impact the traffic in a negative way and would handle the parking that was on the site. He said there were many public benefits by improving the brook that helped maximize the best use of the site. Vice-Chair Margeson said No. 4 of the special exception criteria was that there would be no creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity. She said the parking wasn't within the purview of the Board but rather was the increase in the level of traffic congestion in the vicinity. She said the applicant was going from a 56-room hotel to a 124-room hotel with a Starbucks, and they were also reorienting it so that all the traffic would go down Coakley Road because there were no more curb cuts on Route 1. She said further down on Coakley Road was a hotel and plumbing supply company but then all residential. She asked if there were any trip generation reports when the applicant went before TAC and the Planning Board that stated how many cars would be drawn into the lot. Mr. Crimmins said the the project was expected to generate 81 new trips during the weekday morning peak hour, 70 new trips during the weekday afternoon peak hour, and 131 new trips during the Saturday mid-peak hours. He said the trip generation estimate included a credit for the existing hotel and credit for the Starbucks trips but no credit for internal trips. Vice-Chair Margeson said that was a substantial increase in the level of traffic, and Mr. Crimmins agreed but said the finding for the intersections and impacts themselves was that generally they were not decreasing the level of service despite those additional peaks, so the signals were intended to operate at the same level of service. Vice-Chair Margeson asked if most of the traffic would come off Route 1 or down Coakley Road the other way, and Mr. Crimmins said it would come from Route 1 Bypass.

Mr. Rheume said he didn't see any dimensions on the site plan for the one-foot setback and presumed it was where the road came up close to the property line along the Route 1 Bypass. Mr. Crimmins agreed. Mr. Rheume said the reasons for the placement of the dumpsters seemed related to the Starbucks, and he asked why that location was selected and not one that was in full compliance with the zoning ordinance. Mr. Crimmins that it was to provide a dumpster within proximity of the Starbucks. He said the location was selected due to the circulation of the site and the existing topography and screening from the road. He said it would also have an added length of distance that exceeds ten feet from the road. Mr. Rheume said the applicant was asking for one foot where a minimum of 44 feet was required, one foot where 10 feet was required, and one foot where 30 feet was required. He referred to the one foot up against the property line for parking and said the applicant mentioned that the current site had 405 parking spots in a tiny corner up against Coakley Road. He asked why the applicant didn't consider relocating the hotel up against Coakley Road and including the parking behind it to better adhere to the spirit of the ordinance. Mr. Crimmins said the layout for the program would not fit if the hotel were pushed up along the road and the setback was adhered to. Mr. Rheume said Starbucks seemed to be driving the request, along with three of the other requests for variances, which was the dumpster, the drive-thru bypass, and the menu board. He asked if the applicant considered eliminating that aspect of the project to

bring it more into compliance with the zoning ordinance as far as new structures on properties like that. Ankur Patel of Giri Hotels said there would be no project without the Starbucks because Starbucks was factored into offsetting some of the construction costs.

Referring to the special exception request, Mr. Rheume said the applicant stated that he talked to the New Hampshire Department of Transportation (NHDOT) regarding the site and asked if the topic came up about a vision by NHDOT to eventually eliminate the traffic signal at the end of Coakley Road and how it factored into the applicant's proposal. Mr. Crimmins said it was part of their pre-application meeting and that they looked at it from a median standpoint and keeping the existing intersections. He said they would have to see how NHDOT wanted them to proceed. He said they did not submit a traffic analysis yet because they first needed relief granted for the project.

Mr. Rossi said Criterion No. 5 of the special exception criteria was that there would be no excessive demand on municipal services including sewer. He said sewer capacity was not unlimited and was not cheap, and he asked how the applicant ascertained that moving from 59 hotel rooms to 124 rooms plus adding a restaurant that would generate wastewater and sewage would not create an excessive demand on the finite sewage capacity in Portsmouth. Mr. Crimmins said he didn't have the flow data, but given the recent upgrades to the treatment plan, they anticipated that it could handle the capacity. He said if they were required to provide upgrades as part of the TAC process, it would have to be reviewed by City engineers and signed off and then go through an NHDES sewer connection process. Mr. Rossi observed that there was no quantitative analysis of any kind. Mr. Crimmins said they wouldn't look that far ahead because too much would happen between the site and the pump stations, pipes, and so on. He said they would analyze it from leaving the site and getting into the sewer pipe and rely on the DPW staff to ensure that there was adequate capacity for the plant to handle it. Mr. Rossi referred to the applicant's statement that the project was designed to site the buildings and structures as far from Hodgkins Brook as possible, and he asked if that meant to say as far as possible for a building of that size. He noted that a smaller building could be placed closer to Coakley Road and away from the brook. Attorney Bosen said it was a first step in a very long set of approvals and the ordinance states that there had to be a substantial increase in the level of traffic congestion. He said they were only at the special exception stage and there would be many levels of review and approval before the project got built.

Mr. Mattson said he saw some numbers over 60 feet in the elevation plans and some under, and he knew that 60 feet was the height limit. He asked for clarification as to how the ordinance's height definition was applied and what the actual height was. Attorney Bosen said he thought it was the height of the parapet, which was the maximum height. Mr. Mattson asked what the actual height as defined by the ordinance was. Attorney Bosen said the intent was to meet what was required by the ordinance. Ms. Geffert said there was a retaining wall and the property sloped down to the brook, and she asked if the applicant was proposing that everything would be leveled in terms of the new property and the asphalt. Mr. Crimmins said the site would still slope as it presently did and the drive-thru queuing would be set down from where the height of Coakley Road was.

Chair Eldridge opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

No one spoke.

SPEAKING IN OPPOSITION TO THE PETITION

Jim Lee of 527 Sagamore Avenue said he was opposed to the special exception and the variance requests. He said some changes had already occurred in the already-crowded area in the past, like Liberty Mutual reactivating their facility on Borthwick Avenue that generated more traffic. He said a triple-sized motel and a Starbucks could only exacerbate the traffic problems.

Esther Kennedy of 41 Pickering Avenue said it sounded like a lot of things had to go through the State for approval and thought it should happen before coming before the City. She pointed out that the Master Plan stated that nothing could not be built within the buffer zone. She said there were a lot of logistics and wasn't sure what the applicant's hardship was.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DISCUSSION OF THE BOARD

Ms. Casella suggested a condition of approval noting that the design of the structure might change as a result of the site plan review with TAC and the Planning Board. Mr. Mattson referred to the special exception and said he had no problem allowing a hotel but wondered if it could be approved as presented. Mr. Rossi said he did not find that the applicant had provided adequate evidence that the criteria for the special exception would be satisfied, so he would not be in favor. Vice-Chair Margeson said she believed that the congestion in the vicinity and the traffic safety hazards had not been demonstrated by the applicant, most of which was driven by the Starbucks, but she had to approve that in combination with the hotel and she didn't think it met the criteria.

Mr. Rheume referred to the special exception and said the Board would be approving a hotel use. He said the ordinance talked to sizes and that the Board didn't make a distinction in how the application was advertised. He said there was a separation from the variances because it came down to a 124-room hotel on the property. He thought the question of whether it met the special exception criteria was separate from some of the variances being asked for, and he said the Board had to be careful that they didn't throw non-hotel related concerns into their special exception for the hotel. He said traffic was a consideration because the number of vehicles going back and forth was being more than doubled, and there would be future traffic changes and patterns in the area. He said he didn't think the residential portion of Coakley Road would be negatively impacted other than people being able to get to and from their residences. He said the size of the hotel gave him some pause for the special exception, otherwise he thought special exceptions were low thresholds to meet in terms of stormwater and increase in sewer use. Regarding the variances, he said he had concerns because the applicant argued that it was a hardship for them to be on a small lot with a brook going through it, but he felt that at some point hardship turned into overdevelopment. He felt that the applicant was sticking what they wanted in the most cookie-cutter way that they did on their other properties. He said the one-ft setback from almost the entire property line along Coakley Road

was too much. He noted that the spirit of the ordinance was to try and do different things in these areas to change from the same look of parking in front and building in the back to something different, and that was also a goal of the Master Plan. He said the idea that the lot was too small was not a hardship, it was just telling the Board that the applicant was asking for too much to place on the lot. He said the special exception could be approved but the variances were not approvable.

[Timestamp 1:16:25] Chair Eldridge said the Board could postpone and ask the applicant to go before TAC before coming back before the Board again. Ms. Casella said that the applicant would have to go before TAC with specific questions about traffic flow or sewer system impacts. She said the Board could send those concerns and questions to TAC and ask for the PWD to make a recommendation about those concerns. Mr. Rossi said it would be appropriate if the Board had questions about the special exception, but the applicant was improving the variances pending the special exception. He said the Board would be sending the applicant on an errand that would find the applicant back the Board, which he didn't think was fair. Vice-Chair Margeson said she wasn't in favor of it because the applicant had already been in front of TAC. She said she thought there was no hardship and said the applicant made the decision to come before the Board. Mr. Rheume asked if denial of the special exception would be saying that the Board could not authorize any hotel in that space or would be demanding that it be a different size. Ms. Casella said the proposal would have to be substantially different. Mr. Mattson said he thought it was an improvement to remove the curb cuts along the Route 1 Bypass in terms of a traffic safety hazard. He said there would obviously be an increase in the level of traffic, and whether it was substantial was debatable. He said as far as the excessive demand including sewer, he said there would be an increase demand but whether that was excessive was also debatable. He agreed that the special exception was separate from the variance requests, so he wasn't sure if the Board could just vote on the special exception first. Mr. Rheume asked if the Board could table the special exception and just vote on the variances or if the Board could deny without prejudice. Ms. Casella said the proposal before the Board was a full project and parsing it out would make things more difficult because if part of it was denied, then the whole project wouldn't be approved together anymore. She said the Board could consider reopening the public hearing and asking more questions of the applicant, but it was a full proposal that requires a special exception.

DECISION OF THE BOARD

*Mr. Rossi moved to **deny** the special exception request, seconded by Vice-Chair Margeson.*

Mr. Rossi said that, considering the five criteria for approval of a special exception, the Board finds that the proposal falls short on two important aspects of satisfying those criteria. He said one was Criterion 10.233.24, no creation of a traffic safety hazard or substantial increase in the level of traffic congestion in the vicinity. He said the proposal as it stands will necessarily increase traffic congestion in an already congested area and therefore does not satisfy that requirement. He said the other criterion was 10.233.25, no excessive demand on municipal services. He said there had not been an adequate analysis presented to demonstrate that there would not be an excessive demand placed on the finite capacity of Portsmouth's water treatment facilities, based on the increased number of hotel rooms and the addition of a restaurant to the site. Vice-Chair Margeson said she agreed with Criterion No. 4, that the numbers presented by the applicant indicate that there is a

substantial increase in the level of traffic congestion in the vicinity, but she did not agree that the project violated No. 5. She said hotels were big users of water and sewer, but when she thought of no excessive demand on municipal services including but not limited to water, she thought of something like Lonza, who did a lot of manufacturing and used a huge amount of water. Mr. Rossi said he would modify his motion to eliminate Criterion No. 5.

Mr. Mattson said that, even though there would be an increase in the level of traffic, the project engineer stated that the level of service would still be adequate, so he thought there would not be a creation of a traffic safety hazard. Mr. Rheume said he would not support the motion because he thought there were concerns about the traffic but wasn't convinced that it could be addressed to the Board's satisfaction. He thought the Board needed more technical information to allow them to deny the special exception based off the traffic impacts. Ms. Geffen said it seemed that the bigger concern was the Starbucks and that traffic load and not necessarily the hotel. She said the combination of a hotel and restaurant didn't appear to be contemplated and noted that a restaurant was permitted in the GB District. Vice-Chair Margeson said she based her second on Mr. Rossi's motion on information presented by the applicant as to trip generation, which apparently the applicant had been doing before the Planning Board.

*The vote to deny the special exception **failed** by a vote of 4-2, with Ms. Geffert, Mr. Rheume, Mr. Mattson, and Chair Eldridge voting in opposition.*

*Mr. Rheume then moved to **continue** to the February meeting consideration of the special exception, with the request to the applicant to provide more detailed information to the Board on trip generation, impacts of future potential changes to highway entrances and exits, traffic signalization, and potential impacts to the neighborhood in the sense that it would be one of two outlets to that neighborhood and that it would be limited to the proposed hotel at the proposed size. Mr. Mattson seconded.*

[Timestamp 1:1:34] There was further discussion. Vice-Chair Margeson said the Board was supposed to act upon the application immediately following the public hearing. Mr. Rheume said the Board could take more time to get the information they needed to make the proper decision and that he would want more detailed information to make a determination about the special exception so that the applicant wouldn't be placed into a Fisher v. Dover position. Ms. Geffert asked if a special exception was needed for the restaurant. Mr. Rheume said his motion was related to the special exception, which was related to the hotel. He said it was up to the applicant to address the Board's concerns and to convince the Board regarding the special exception.

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

*Mr. Rheume moved to **deny** the five variances, seconded by Vice-Chair Margeson.*

Mr. Rheume said he expressed his concerns with the project. He understood what the applicant wanted and that they made an economic argument, but he said economics was not one of the Board's factors. He said the project failed on two criteria, including the hardship criterion that was

the main criterion the petition failed, and he thought denying all five variances made sense because they were interrelated to the proposed layout of the property and trying to force a lot of stuff into a small parcel. He said granting the variances would not observe the spirit of the ordinance, which tied into the public interest and the characteristics of the neighborhood. He said at some point the Master Plan wanted to put new structures on old properties, and it was the kind of look it wanted for the next generation of buildings in that area. He said what was being asked for was not trying to respect what was coming out of the Master Plan in terms of positioning the building. He said there was an opportunity to move the building farther away from the brook, but it was being driven by the presence of the Starbucks. He said the spirit of the ordinance did not want the same cookie-cutter look, and it didn't want the parking between the building and the street or pressed up against the street. He said there wasn't a lot of distance between the edge of the property line and Coakley Road. He said the applicant said the hardship was the small lot with a brook running through it, which he agreed with, but it did not correlate to the degree of variances that the applicant was asking for, which were variances that were tied to the desire to have everything the applicant wanted on the lot. He said the Board looked at the unique characteristics of the property, not what the applicant's economics were. He said there were opportunities to rework the application and perhaps keep Starbucks and be a better project in terms of the Master Plan and the ordinance.

Vice-Chair Margeson concurred. She said her concern was the one foot between the parking and the front lot line and that there would be a substantial amount of ingress and egress traffic. Ms. Geffert said the plan was heading in the right direction but could be improved by shrinking the building's footprint so that the variances in terms of closeness to the Route 1 Bypass and a little bit of Coakley Road could be adjusted.

The motion to deny the variances passed unanimously, 6-0.

- B.** The request of **William C. Giles Revocable Trust (Owner)**, for property located at **375 Coolidge Drive** for after-the-fact construction and demolition of existing decks, which requires the following: 1) Variance from Section 10.521 to allow: a) a 17 foot rear yard where 30 feet is required, and b) building coverage of 22.5% where 20% is the maximum 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 268 Lot 41 and lies within the Single Residence B (SRB) District. (LU-23-200)

SPEAKING TO THE PETITION

[Timestamp 1:44:24] Attorney Colby Gamester was present on behalf of the applicant, along with the owner William Giles and his contractor. Attorney Gamester said they were seeking after-the-fact relief for retention of the rear deck. He said the owner had the back deck constructed and began to have a side deck constructed when the City became aware of it and issued a cease-and-desist order. He reviewed the existing conditions and the proposed conditions plans and said most of the front deck except for a small portion of the of the landing and stairway would be removed as well as the side deck, and the back deck would remain. He reviewed the criteria.

Mr. Rheume noted that the applicant indicated that the 2-story addition and the 2-car garage were pursuant to zoning relief that was given to the previous owner from the BOA in 2002, but the Staff Memo said there was no previous history found. Attorney Gamester said it was in the Planning Department file. Ms. Casella said she would err on the side of what the applicant presented. Mr. Rossi asked who built the decks. Attorney Gamester said the contractor was an experienced one who expanded into decks during the past summer. Mr. Rossi said the size of the deck was perplexing and that it was beyond him how anyone could say they didn't need a permit or have someone inspect everything to make sure it was compliant. He asked how the Board would be assured that the remaining deck had been built in compliance with all the appropriate safety standards. Attorney Gamester said a building permit was still required and was a proposed condition of the Staff Memo. He said the Inspection Department saw the deck last spring and a building permit was filed with respect to it, as well as the side deck that was no longer needed. Mr. Rossi said he normally wouldn't have any problem with the variance if it had been brought to the Board proactively, and he wanted to be convinced that it was not an intentional violation of the requirements to get a building permit, but he would take the applicant's word at face value.

Mr. Mattson said there was a door going onto the side deck that was removed and asked if it would be closed off or have a landing. Attorney Gamester said the owner intended to have landscaping back there and that the contractor would reconstruct the area, but that it wasn't currently accessible but if it were, it would be done by raising the slope and grading everything out naturally. Mr. Mattson said it would not affect the building coverage at all then, and Attorney Gamester agreed. Vice-Chair Margeson said there was a significant raising of the grade by the door. Attorney Gamester said there used to be grade there before it was deconstructed, and the owner said there was a typical landing toward the bay window with supports that raised it. He said the owner would have to decide if he wanted the door to be operable, and if so, he would return before the Board. Vice-Chair Margeson said she shared Mr. Rossi's concern about a building permit not being pulled and that she didn't understand it, especially given the size of the deck. She said the submitted survey seemed like it was just a review. Attorney Gamester said there was a review on both the existing and proposed conditions plans when it was sent to him, and after several discussions with T. L. Moran, it carried over. He said he could have T. L. Moran send the Planning Department a stamped survey if necessary. Vice-Chair Margeson asked if the stamped version would be identical to the present one. Attorney Gamester said the existing conditions plan should be exact, and if they provided a proposed conditions plan, it would be different because the front deck was removed.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke.

Ms. Casella noted that she wanted to confirm that the advertised building coverage of 22.5 percent requested was now 21-1/2 percent and would be the final building coverage. Attorney Gamester agreed. Ms. Casella said she recommended that the Board acknowledge that it was 21.2 percent and that it would be rounded up to 21-1/2 percent rather than the 22.5 percent that was advertised.

Chair Eldridge closed the public hearing.

DISCUSSION OF THE BOARD

Mr. Rossi said he didn't fully comprehend the applicant's answer as to whether or not there was an action by the Board previously to accommodate the 2-story garage. He said there was something odd going on, so he thought that any action the Board took that evening should be predicated on follow-up by the Planning Staff to confirm that there was indeed an action taken and that the 2-story garage complied with whatever was granted. Mr. Mattson said he had no problem with the application but thought it was unfortunate that it was an after-the-fact request. Chair Eldridge said she looked at it the way she would have the first time. Mr. Rheume said he was supportive of the application and thought the request for relief was reasonable because it was trying to match up to a non-existing encroachment into the back lot line distance. He said it was therefore the same because the applicant wasn't asking for more than what was currently there. He said his concern was that, if there were an issue to create another landing to be able to use the side entry door, that should have been presented that night instead of something for future consideration. He said the property's slope made it impossible to create a less than 18-inch patio in the back, so it would have to be a deck.

DECISION OF THE BOARD

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

Mr. Rheume said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said back decks were common and there was no public interest that would be of concern. He said the deck would be hidden from the road and the relief being requested indicated that it was already an existing protrusion off the back of the house that went into the rear yard setback, so he felt that the applicant wasn't asking for anything more than that. He said it was more reasonable than trying to create a much larger deck that expanded further back. He said substantial justice would be done from the perspective of the neighbors because there was no general purpose of the public interest that would outweigh the applicant's ability to create the deck, which was their only option for outdoor recreation in the back of their property. He said granting the variances would not diminish the values of surrounding properties because the deck was a modest one. He said what was requested was small in terms of 1-2 percent of the coverage requirement. He said the hardship was that the current house was pushed all the way back to the 30-ft setback line and any attempt to use the backyard for recreational purposes would require relief. He said the property's sloping condition and the nature of the surrounding properties also made the request not excessive in terms of its impact. He said it met the hardship criteria and that adding an outdoor living space on the back side of the property was a reasonable use.

Mr. Rossi asked for a condition that the approval be predicated on the Planning Staff following up and confirming that the 2-story garage has the proper history to it with regard to BOA actions taken in 2002. Mr. Rheume agreed. Vice-Chair Margeson asked to stipulate it as 21.5 percent coverage.

Mr. Rheaume said he wasn't sure that the advertised 22 percent v. the actual 21-1/2 percent was a big deal and that he was fine with what was advertised as 22 percent. The Board agreed.

The **amended** motion was:

*Mr. Rheaume moved to **grant** the variances as requested and advertised, with the following condition:*

- *The approval shall be predicated on the Planning Staff confirming that the 2-story garage has the proper history to it with regard to BOA actions taken in 2002.*

*Mr. Rossi seconded the motion. The motion **passed** unanimously, 6-0.*

- C. The request of **Jewell Court Properties LLC (Owner)**, for property located at **33 Jewell Court Unit S1** whereas relief is needed to establish an event venue serving up to 250 people which requires a Special Exception from Section 10.440, Use # 9.42 where it is permitted by Special Exception. Said property is located on Assessor Map 155 Lot 5-S1 and lies within the Character District 4-W (CD4-W) and the Historic District. (LU-23-205)

SPEAKING TO THE PETITION

[Timestamp 2:31:25] Attorney John Bosen was present on behalf of the applicant, along with the applicant Jessica Kaiser. Attorney Bosen said they wanted to repurpose the vacated second floor office space to make it into an event center. He reviewed the petition and special exception criteria. Jessica Kaiser said that most of the events would not hit the maximum capacity. She said the existing parking would be adequate and the guests would stay at inns and dine and shop in Portsmouth, which would benefit the City and that local vendors and caterers would be hired.

Mr. Rossi asked what was on the first floor. Ms. Kaiser said it was a web development firm and an architectural firm. Mr. Rossi asked if the sound engineer looked at the sound going down to the first floor. Ms. Kaiser said he did but that the events would take place when the tenants were not in the building. Mr. Rossi asked how the Planning Department ascertained that the building structure and floor were adequate to support people dancing. Ms. Kaiser said the tenant fit-up was part of the building permit process and the Inspection Department would do a full evaluation. Mr. Rheaume said the relief asked for was between 50-250 patrons and that the applicant said 160 was more realistic. He asked if an analysis was done to know what the fire code would allow in that space. Ms. Kaiser said she spoke to someone in the fire department about getting additional information but it was still in the works. In response to further questions from Mr. Rheaume, Ms. Kaiser said her clients would be required to use the shuttle or valet service and that it would be enforced by a contract. As far as the valet option and finding any available parking spots, she said she was in touch with the manager of the Partners Bank property, where there were 80 available spots, and that another property on Islington Street had several spots available. She said she also reached out to the Bank of America property owner who had an entire back parking lot available.

Vice-Chair Margeson said the applicant mentioned two other buildings that were part of the condo association. Ms. Kaiser said the condo president Eric Chinberg owned two other buildings. Vice-Chair Margeson said the 205 spaces seemed to belong to the people who lived in the other residences. Ms. Kaiser said it was a shared lot for all the buildings and the parking access was established in 2015 that granted the use of those spaces on a first-come first-served basis for all the tenants in the buildings. In response for further questions from Vice-Chair Margeson, Ms. Kaiser said she would not need 29 parking spaces because the only people using spaces during the events would be the caterers and vendors and a few clients who wanted to bring in additional items. She said she anticipated the need for 15 or so parking spaces and that there were enough spaces for all the residents in the buildings. Vice-Chair Margeson said some of the residents may find themselves without their parking spaces on the weekends. Mr. Kaiser said she wouldn't be using them because she'd have the shuttle and valet. She said there were 18 exclusive spots for the property and 24 spots behind another building accessed from a back street, and if she needed more than 20 spots, she would use those. Vice-Chair Margeson said that was a tough spot to maneuver in and asked how many cars could fit in that space. Ms. Kaiser said it would be a maximum of 250 spaces.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

*Mr. Rossi moved to **grant** the special exception, seconded by Mr. Mattson.*

Mr. Rossi said it was a use permitted by special exception in that zone. He said granting the special exception would pose no hazard to the public or adjacent properties on account of fire, explosion, or toxic material hazard. He said the type of use in the proposed building is consistent with what's going on in the neighborhood. He said it was a dense intermingling of entertainment, hospitality, and residential use. He said he did not believe that allowing the special exception would have a detrimental impact on surrounding properties, particularly since a sound study was performed that addressed the one potential concern with noise level, which addressed Criterion 3. He said there would be no creation of a traffic safety hazard or substantial increase in the level of traffic congestion in the vicinity, noting that the shuttle service would transport lots of people with a smaller number of vehicles. He said it was a congested traffic area but the applicant stated that they would require the use of either a valet or shuttle service parking, which he said addressed Criterion 4 adequately. He said granting the special exception would pose no additional demand on municipal services and no impact on stormwater runoff onto adjacent properties because no changes were being done to the building externally. Mr. Mattson concurred and said the application was a great idea, particularly with the use of shuttles for wedding guests. He said it addressed the traffic issue and was a great addition to the community. Mr. Rheaume said he would support the motion because in terms of the Board's threshold for special exception and the criteria of no creation of traffic safety hazards and no substantial increase in the level of traffic congestion, he said the applicant presented a plan that could work. He noted that it had to go through the parking condition use

permit process with TAC and the Planning Board. He said the other thing that swayed him was that the parking would be contained to the condo association, so there was really no impact on the general public. He said there wasn't a lot of available street parking in that area that would get taken up by cars for the venue, but if there were, the condo association could work it out.

The motion passed by a vote of 6-0.

- D. REQUEST TO POSTPONE** The request of **Friends of Lafayette House in care of Melanie Merz (Owner)**, for property located at **413 Lafayette Road** whereas relief is needed to construct an attached caretakers unit to the existing residential care facility which requires the following: 1) Variance from Section 10.331 to extend, enlarge, or change the lawful nonconforming use without conforming to the Ordinance; and 2) Variance from Section 10.334 to extend the nonconforming use to a remaining portion of the land. Said property is located on Assessor Map 230 Lot 23A and lies within the Single Residence B (SRB) District. **REQUEST TO POSTPONE (LU-23-208)**

DECISION OF THE BOARD

The petition was postponed to the February 20 meeting.

- E.** The request of **Tamrah Rouleau and Jermy Rouleau (Owners)**, for property located at **159 Madison Street** whereas relief is needed to construct a third floor addition to the existing structure which requires the following: 1) Variance from Section 10.521 to allow an 8 foot left side yard where 10 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 145 Lot 54 and lies within the General Residence C (GRC) District. (LU-23-201)

SPEAKING TO THE PETITION

[Timestamp 3:00:36] The owner Jermy Rouleau was present and reviewed the petition. He said they wanted to add a third floor for more space. He reviewed the criteria and said they would be met.

Mr. Rheume asked if the only relief needed was for the blue-shaded section of the diagram, and Mr. Rouleau agreed. He noted that the neighbors approved the project.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

*Mr. Rossi moved to **grant** the variances as presented and advertised, seconded by Ms. Geffert.*

Mr. Rossi said the spirit of the ordinance and the nature of the setbacks was to preserve light and air in surrounding properties. He said the building was already a tall, narrow, and deep structure, and whatever shade was cast on surrounding properties would not be any greater based on the small variances being requested. He said granting the variances would do substantial justice because there would be no loss to the public that would outweigh the benefit to the applicant. He said it would not diminish the values of surrounding properties because the presented plan was consistent with what was in the neighborhood and would not have any detrimental impact on the surrounding properties and probably would enhance the values of the immediate neighboring properties. He said the hardship was due to the special condition of the property having the exact footprint of floor plan for the third floor, and only a small portion of it required zoning ordinance relief. He said it already existed in the historic structure on the site and was the special condition that made it reasonable to grant the variance. He said it would be unreasonable to require that the addition on the third floor not be permitted to run along the current out line of the structure.

Ms. Geffert concurred and had nothing to add. *The motion **passed** unanimously, 6-0.*

- F.** The request of **RIGZ Enterprises LLC (Owner)**, for property located at **822 Rt 1 Bypass** whereas relief is needed to demolish the existing structure and construct a new commercial building which requires the following: 1) Variance from Section 10.1113.20 to allow parking spaces between the principal building and a street; 2) Variance from Section 10.1113.41 for parking located 0 feet from the lot line where 20 feet is required; Said property is located on Assessor Map 160 Lot 29 and lies within the Business (B) District. (LU-23-209)

SPEAKING TO THE PETITION

[Timestamp 3:08:28] Attorney Monica Kaiser was present on behalf of the applicant, with project engineer Alex Ross and contractor Dave Grabowski. She reviewed the site plan and the criteria.

Mr. Rheume asked if there was a right-of-way or easement to allow vehicles to traverse or if the property owner would create that passage. Mr. Ross said there was no written right-of-way or easement and that the passage had been used throughout history, which the owner would like to continue. Attorney Kaiser said the neighborhood could access the store that way as well.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

John Allard of 24 Burkitt Street said he was surprised to find out that Burkett Street didn't go all the way to the bypass. He said most people using it came from the bypass and thought it was a street, and he suggested doing something about that because accidents could happen.

Chair Eldridge said TAC and the Planning Board would review those issues. Attorney Kaiser said the applicant already went before TAC, who directed them to the BOA, and they the applicant still have to go through a full site review.

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

DISCUSSION OF THE BOARD

Ms. Geffert said the Board was being asked to grant a variance because the parking spots closest to the bypass were too close, but the need for them related directly to the size of the building and hadn't gone through site review. Chair Eldridge said it was always an issue when parking was up against the street but the tradeoff was having the building moved further to benefit the homeowner. Mr. Rheume said multiple boards had to hear the application because there was always a potential for changes between the boards. Vice-Chair Margeson said the building was presented as advertised and the square footage drove the parking spaces in the front, and if the building changed and there was need for less parking spaces in the front, she thought it would be okay.

Ms. Casella said she wanted to add her standard condition that the design and the structure may change as a result of TAC and Planning Board reviews. The Board declined to add the stipulation.

Mr. Rheume referred to a previous similar project and said he didn't believe there were unique circumstances to the application before them because there was no way to move the building to the front and still have exits and entrances to support the easement. He said the close residential properties behind the applicant's property created another factor for why parking in the back wasn't desirable because it created a darkened area that could be a source for nefarious conduct. He said those things tipped him in the balance of what the applicant was asking for. Vice-Chair Margeson said the previous similar project had more cars and introduced something that wasn't there before. She said she went to the site and saw parking on the other part of the lot but thought concerns would be alleviated by improvements to the lot layout and going before TAC and the Planning Board.

DECISION OF THE BOARD

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

Mr. Rheume said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said zero-ft setbacks were something that the Board looked at carefully. He said it was a significant change from what was being asked for but it made sense to allow the parking to go up against the property line due to the unique site conditions and what was being driven with the need to honor the access rights to the neighboring property. He said substantial justice would be done because there was nothing in the public interest that would outweigh the applicant's desire. He said additional benefits to the public would be moving the building towards the back of the property. He said granting the variances would not diminish the values of surrounding properties, noting that it would be consistent with all the similar properties there and would create another small business on the property and would not overburden it by a

one-story structure. He said the property's special conditions that drove the site plan were that the property was right up against a residential neighborhood and burdened by an easement for access as well as somewhat burdened by the perception that Burkitt Street ran up to the Route 1 Bypass. He said the applicant was trying to honor that. He said the applicant was required to provide 18 parking spots, and the only realistic way to put them on the property was in the location shown and to provide the necessary back-out space that forced the parking spots right up along the property line. He said it was a reasonable use for the property and recommended approval.

Ms. Geffert concurred and said the parking against the bypass continued to what was adjacent. Chair Eldridge said the project would not change the streetscape.

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

V. ADJOURNMENT

The meeting adjourned at 10:35 p.m.

Respectfully submitted,

Joann Breault
BOA Recording Secretary