

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

7:00 P.M.

April 30, 2024

MEMBERS PRESENT: Beth Margeson, Vice Chair; Paul Mannle; Thomas Nies; Thomas Rossi; Jody Record, Alternate; ML Geffert, Alternate

MEMBERS EXCUSED: Phyllis Eldridge, Chair; David Rheaume; Jeffrey Mattson

ALSO PRESENT: Jillian Harris, Planning Department

Acting-Chair Margeson called the meeting to order at 7:00 p.m. Alternates Ms. Record and Ms. Geffert took voting seats for the evening. Acting-Chair Margeson stated that originally there were only supposed to be five voting members present and the applicants were told before the meeting that they would have the option to postpone according to the rules. She said even though there were now six members, the applicants could still postpone because they were told that there would only be five Board members present.

I. NEW BUSINESS

- A.** The request of **Elizabeth Coursen (Owner)**, for property located at **229 Pleasant Street, Unit 4** whereas relief is needed for the following: 1) Variance from Section 10.515.14 to install a mechanical unit 5.5 feet from the side property line whereas 10 feet is required. Said property is located on Assessor Map 108 Lot 6 and lies within the Mixed Residential Office (MRO) and Historic District. (LU-24-42)

SPEAKING TO THE PETITION

[Timestamp 4:00] The applicant Beth Coursen was present and chose not to postpone the petition. She said she lived in and owned the carriage house on the property and could see other mini splits from several properties around her that did not seem to meet the regulations for the district. She reviewed the petition and the criteria.

[Timestamp 8:14] Mr. Nies asked the applicant why she thought the chosen location was the best one for the use. Ms. Coursen said that she submitted an application for a mini split the previous year that called for it to be in the front of the carriage house but was told that its efficiency would be diminished because the lines to the inside units would be longer. She said both the front and the back of the house were visible from Richmond Street and that the mini split's new location between her property and the adjoining one would only be visible to the adjoining property owner.

Mr. Rossi referred to the memo from Brigitte Bailey and the condominium association and asked if both the properties referenced in the memo were part of the condo association. Ms. Coursen said the Morrow property was not part of the condo association but was the adjoining property on Richmond Street and that the owner submitted a letter stating that she had no objection.

Acting-Chair Margeson opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Acting-Chair Margeson closed the public hearing.

DECISION OF THE BOARD

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

[Timestamp 11:10] Mr. Rossi said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said the general purpose of the setback requirements in the zoning ordinance was to preserve open space and light between structures, and the mini split was a low profile unit that would not cast any shadows in any significant bulking way or infringe upon the open space between the applicant's property and the adjoining one. He said it would do substantial justice because there would be no loss to the public due to the unit being placed out of sight of the general public, so it would not have a detrimental impact on the character of the Historic District. He said, therefore, that denying the variance would create a burden for the applicant that would not be properly counterbalanced by a loss to the public for approving the variance. He said granting the variance would not diminish the values of surrounding properties, noting that the most adjacent abutter submitted a letter of support for the variance, which indicated that the person in the best position to estimate the impact on the value of their property has determined that it would not have a negative impact on the value of their property. He said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. He said the hardship of the property was its location in a crowded area with substandard-sized lots, and the purpose of the ordinance is not to prevent modernization of HVAC units within a residential community like the applicant's, therefore the literal enforcement of the ordinance does not have any bearing on the purpose of the ordinance. Mr. Mannle concurred. He said these types of variance requests, especially for mechanical units, are quite common in a city that is 400 years old and that the Board should approve it. Ms. Geffert said she wanted to encourage mini splits as long as there was no real dimensional change because they were a great replacement for air conditioning.

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

- B.** 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 10.835.32 to allow 5 feet between the lot line and drive-thru and bypass

lanes where 30 feet is required for each; 3) Variance from Section 10.835.31 to allow 18 feet between the menu and speaker board and the front lot line where 50 feet is required; 4) Variance from Section 10.5B22.20 to allow up to 60 feet in building height within 50 feet of the street right-of-way line whereas up to 45 feet is permitted; 5) Variance from Section 10.5B34.70 to allow up to 60 feet in building height whereas 50 feet is permitted; 6) Variance from Section 10.5B34.60 to allow a 30 foot setback for a small commercial building whereas a maximum of 20 feet is permitted; 7) Variance from Section 10.5B33.20 to allow less than 75 percent front lot line buildout whereas a minimum of 75 percent is required for commercial buildings. Said property is located on Assessor Map 234 Lot 5 and lies within the Gateway Neighborhood Corridor (G1) District. (LU-24-44)

SPEAKING TO THE PETITION

Attorney John Bosen was present on behalf of the applicant and said they wished to postpone the petition, given the makeup and size of the Board that evening

DECISION OF THE BOARD

Acting-Chair Margeson noted that she told the applicants before the meeting that there would only be five voting members, so the applicants had the option to postpone

*Mr. Mannle moved to **postpone** the petition to the May 21 meeting, seconded by Ms. Geffert. The motion **passed** unanimously, 6-0.*

- C. The request of **Joshua P. Lanzetta (Owner)**, for property located at **255 McKinley Road** whereas relief is needed to construct additions to an existing single-family residence which requires the following: 1) Variances from Section 10.521 to allow a) a front yard of 18 feet where 30 feet is required; b) a rear yard of 14 feet where 30 feet is required; and c) 23% building coverage where 20% is the maximum allowed. Said property is located on Assessor Map 250 Lot 16 and lies within the Single Residence B (SRB) District. (LU-24-38)

SPEAKING TO THE PETITION

[Timestamp 19:00] The applicant Joshua Lanzetta was present to review the petition. He said his home was small and that he wanted to expand the western side of the house to make the living room larger, add a front and back landing, and add a mud room and potentially an office space. He showed the neighborhood context and said it had 80 percent nonconformity and that he wanted to mimic the existing setbacks for the front and back abutting properties. He said he had four letters of support from his closest neighbors as well as support from other neighbors. He showed a realtor's comp appraisal and the concept of the architectural design and he reviewed the criteria.

[Timestamp 37:33] Mr. Mannle asked why the maps shown by the applicant during his presentation were not part of the packet. Ms. Harris said the presentation was given to her prior to the meeting

and that it looked like it had all the items that were in the packet, along with MapGeo maps. Mr. Mannle said the packet did not have area maps or specific maps for the lot. Ms. Harris said that was new information. The applicant further explained why it was late. Mr. Mannle said it was traditional to include everything the applicant was going to present at the meeting. He asked if the existing one-car garage would be eliminated. Mr. Lanzetta said the garage would be brought forward 20 feet, which would leave four parking spots in front of the garage and some on the sides. Mr. Mannle said the side lot variances in the SRB zone were 10 feet. He said the applicant had eight feet in the front, 13 feet on the property's right side, and at least 15 or more feet off the back side of the property, so he would not have to incur any variances. Mr. Lanzetta said the structure and architecture would be expensive and that they wouldn't be able to use any of the existing structure as far as open space and would be cutting brick and putting high beams for supports. He said the entire layout of the house would have to be reconfigured. He said there was space on the east side that did nothing with the existing structure of the house for the family, which was why they needed more space on the west side. Mr. Mannle said the house was a brick ranch so there were no interior bearing walls. Mr. Lanzetta disagreed and said the bisecting hallway in the house had load bearing walls. Mr. Mannle asked if the current garage would be used as living space. Mr. Lanzetta said it would be a bedroom and that the existing door at the rear had a lintel that would allow entrance into the rear addition. Mr. Mannle verified that the proposed rear addition was for rear entrance and an office and the proposed front addition was for a garage and front entrance. Mr. Lanzetta said the living room would be expanded to allow space for a dining table. Mr. Mannle asked if the brick wall would be removed. Mr. Lanzetta said it would not because of the bay window, the front door, and a header that spanned the entire opening, and he further explained it.

[Timestamp 45:28] Acting-Chair Margeson said renderings were included as part of the presentation, but the representations made for the building with the flat roof and peak roof were considered conditions upon which the variance might be granted, and if they changed, the applicant would have to return. Mr. Lanzetta said he had wanted to ascertain whether the structures would be permitted and that he intended to work with an architect and do the peak roof. He said he wanted approval to not go above the existing ridgeline. Acting-Chair Margeson said the request could be for the pitched or flat roof but the variance was conditioned upon everything presented. She said it would have been better to present an entire application to the Board.

[Timestamp 48:28] Mr. Rossi said when the Board looked at front setbacks, there was usually a provision to look at the average setback on neighboring properties. He asked if the Board knew what that was and if it was consistent with the neighborhood. He said it looked like the house to the right of the applicant's lot line was substantially farther set back than the proposed front building addition. He said the applicant was referencing a single point, which was a corner of an outbuilding on the left property line, so it wasn't really apples to apples. He asked Ms. Harris what the average setback in the neighborhood was. Ms. Harris said she didn't have a specific number but knew that the front yard averaging was not working in favor of the proposed setback. Mr. Lanzetta said it was a short block and the two homes to the east were at the depth that his house was in, about 38 feet, so the formula really didn't do much, and he further explained it. Mr. Rossi asked Ms. Harris if her assessment of the front yard setback included the properties across the street from the applicant. Ms. Harris said it would just be on the same side of the street within 200 feet of the property.

Acting-Chair Margeson opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Acting-Chair Margeson closed the public hearing.

DISCUSSION OF THE BOARD

[Timestamp 54:02] Mr. Rossi said the variance requests were big asks and big encroachments on the front and back yard setbacks. He said the applicant presented a decent rationale as to why the rear addition had to be on the left side of the lot, but he was still concerned about the front yard setback because it was a significant deviation from what was already there. Mr. Mannle said he could not support the application, even though the lot was oddly shaped and had inherent hardship because the current building was 23 feet away from the back lot where the standard was 30 feet. He referred to McKinley Road on the Geo map that showed the two houses on either side as basically the same setback as the applicant's house, and he said the house that directly abutted had an addition that went along the larger side of the triangular lot. He said he did not believe that relief for the back addition to be moved to the other side could be given since it was just an office and a doorway was necessary to get to that office. Referring to the proposed front addition, he said the applicant wanted a variance of 20 feet but was keeping the one-car garage and 20 feet was a lot for one car. Mr. Mannle said he did not see any reason why the garage couldn't be moved back to have less of an impact on the front side of the lot. He said the applicant had options but wanted to add 1,000 sf to a house that was already nonconforming. Mr. Rossi said usually an application where something was becoming more nonconforming had an offset benefit where another aspect of the property became less nonconforming. Acting-Chair Margeson said she initially had problems with the application, like why the applicant couldn't go up and why the addition on the back couldn't go on the other side of the house, but she felt that the applicant answered those issues.

[Timestamp 1:00:48] Ms. Geffert read the statute, which stated that if the Board determines that it lacks sufficient information to make a final decision on an application and the applicant does not consent to an extension, the applicant can submit a new application for the same or substantially similar request for relief. She said if the Board followed that course of action, they would not create a Fisher v. Dover concern. Acting-Chair Margeson said the issue was that the Board did not have enough information. Ms. Geffert said if the Board determined that they lacked sufficient information to make a decision, they could deny without prejudice and allow the applicant to return, as opposed to a formal denial that would create a Fisher v. Dover situation. It was further discussed.

DECISION OF THE BOARD

*Mr. Mannle moved to **deny** without prejudice for an incomplete application.*

[Timestamp 1:03:16] He said the applicant could resubmit the same application with more information or submit a brand new application and that Fisher v. Dover would not be a consideration. Acting-Chair Margeson said that was different from Section 674.33 Section 8 in that if the Board moved to deny without prejudice due to the need for additional information, she did not

think it meant that the applicant could submit a new application but would need to supplement the existing application. Ms. Harris agreed and said the motion needed to include what information was lacking. It was further discussed.

Amended motion:

*Mr. Mannle moved that the Board **deny** the application without prejudice for lack of information, including maps of the neighborhood, photos of the current structure from all angles of the lot, photos of the neighborhood, complete renderings of what the architecture will look like when it is built, and an averaging calculation of the neighborhood. Mr. Rossi seconded the motion.*

[Timestamp 1:06:18] There was further discussion regarding how important it is for an applicant to submit all relevant information in advance of the meeting so that the Board is aware of it; any deviations from the application would require the applicant to return before the Board; and if the application is denied without prejudice and the applicant submits a new application for the same or substantially similar request for relief, there could be minor changes when it comes back.

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

II. ADJOURNMENT

The meeting adjourned at 8:15 p.m.

Respectfully submitted,

Joann Breault
BOA Recording Secretary