

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

**7:00 P.M.**

**May 28, 2024**

**MEMBERS PRESENT:** Phyllis Eldridge, Chair; Members David Rheaume, Thomas Rossi, Paul Mannle, Jeffrey Mattson, Thomas Nies; Jody Record, Alternate

**MEMBERS EXCUSED:** Beth Margeson, Vice-Chair; ML Geffert, Alternate

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

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Chair Eldridge called the meeting to order at 7:00 p.m. Alternate Jody Record took a voting seat for the evening.

**I. OLD BUSINESS**

- A.** The request of **Atlas Commons LLC (Owner)**, for property located at **581 Lafayette Road** whereas relief is needed for after-the-fact installation of an awning sign which requires the following: 1) Variance from Section 10.1251.20 to allow a 32 square foot awning sign whereas 20 square feet is allowed. Said property is located on Assessor Map 229 Lot 8B and lies within the Gateway Corridor (G1) District. (LU-24-1)

**SPEAKING TO THE PETITION**

[Timestamp 1:50] Ryan Lent of 2 Alex Way, Stratham, owner of the Tour Restaurant, was present along with sign representative Tor Larsen. Mr. Larsen said the lighting was only 12 feet larger than it was supposed to be and that changing it would cost thousands of dollars. He said he didn't believe that the sign would cause any issues because the sign was far from Route One and was a non-lit, simple black and white classic design. He reviewed the criteria and said they would be met.

Mr. Rossi asked what the awning's service life expectancy was. Mr. Larsen said it should last between 10 to 15 years.

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 variance for the petition as presented and advertised, seconded by Mr. Mattson.*

[Timestamp 7:20] Mr. Rheume said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said the overall amount of signage was not anywhere close to the maximum allowed, and the entryway was wide with panels on each side, so it wasn't surprising that the proportional awning was as big as it was. He said the lettering on it was proportional to the awning's size and provided important supplemental information. He said the Board did not want to overburden any façade with a lot of writing, information and illustrations, particularly on awnings. He said nothing in the application would counter the characteristics of the neighborhood, noting that the businesses along that strip had signage of various types and sizes. He said granting the variance would do substantial justice because there was nothing that the public would have a significant interest for that would outweigh the applicant's desire to have the information about the nature of what the name Tour meant and to provide that information to their potential clients. He said it would not diminish the values of surrounding properties because the building was at the end of a commercial district that had signage of all types up and down Lafayette Road, and the lettering was just a small amount larger than what was required. He said the hardship that made the property unique was the size of the entryway that had the characteristics of a doorway, and the overall signage configuration and the nature of the business contributed to the unique aspect of the building and that strict application of the ordinance would not make sense. Mr. Mattson concurred. Referring to the hardship, he said the Route One bypass started to curve away from that particular parcel's location on the end of the Gateway District, and there was a grass buffer that set it back farther so that Lafayette Road could split off of the bypass. He said the small amount of increase in sign coverage that went over what was allowed was understandable.

Mr. Nies said he would not support the application. He said he was troubled by the applicant's claim of a hardship by the fact that someone put in a nonconforming sign and could potentially incur costs if the ordinance was enforced. He said he also was not convinced by the applicant's argument about what the special conditions of the property were. He said the building wasn't very different from other buildings along that line of Route One and that the same argument could be made for a larger awning sign for any of those buildings. Chair Eldridge said the Board had in fact used that argument in the past, including hotels off major highways, and she thought the same condition applied. She said it was a busy intersection and the sign covered the doorway, so she didn't think there would be any damage to anyone else and it would make it easier for customers. Mr. Rheume agreed. He said the applicant tried to make that as a condition for hardship, but the way it was worded in the criteria was confusing if someone didn't know the true nature of the lot. He said there were other aspects to the property that were in fact other hardships that superseded what the applicant was making for an argument. Mr. Rossi said he was generally opposed to sign exceptions because he didn't want Route One to look like the gateway through Pottersville and wanted to maintain a decent and subdued atmosphere as much as possible in accordance with the ordinance. He said he was also not generally sympathetic to after-the-fact variances when the result was an error from a contractor, and he didn't buy the economic hardship argument because he believed that the applicant would have recourse to go back to the original contractor and have them

bear the costs of any required changes. However, he said he drove by the intersection almost every day and did not find the sign to be objectionable and would have never known that it was out of conformance if the applicant had not come forward.

*The motion **passed** by a vote of 6-1, with Mr. Nies voting in opposition.*

## **II. NEW BUSINESS**

- A.** The request of **Sakuntalala LLC (Owner)**, for property located at **235 Marcy Street** whereas relief is needed to demolish an existing 1-story addition and reconstruct a two-story attached garage addition on the rear of the existing residential structure, which requires the following: 1) Variance from Section 10.521 to allow a 7-foot left side yard for the addition 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 103 Lot 12 and lies within the General Residence B (GRB) and Historic Districts. (LU-24-68)

### **SPEAKING TO THE PETITION**

[Timestamp 16:39] Attorney Chris Mulligan was present on behalf of the applicant, along with the principles the Sakuntalalas, project architect Bill Bartell, and project engineer Eric Weinrieb. Attorney Mulligan explained the renovations that the applicant proposed to do and said the applicant also wanted to add a new addition with a covered garage to the main dwelling to replace the existing addition that had a substandard shed with no utilities. He said the property was unique because it was small and narrow, the existing main dwelling violated the front and side yard setbacks, and the property did not have the necessary frontage or lot area for the zone. He said the new addition's placement would be more conforming. He noted that abutting properties had nonconforming structures built right up to the lot lines. He reviewed the criteria.

[Timestamp 26:03] Mr. Rheume asked how long the proposed addition would be. Mr. Weinrieb said it would be 22 feet long, four feet longer than existing. Mr. Rheume asked if the calculated 31 percent open space included having the driveway expanded upon, and Mr. Weinrieb agreed. Mr. Rossi asked what it was about the property that prevented the proposed addition from moving away from the left side. Mr. Weinrieb said they would improve the right side by about 12 feet of space between the property line and the building instead of 14 feet. He said they were shifting it over to leave enough room for a driveway to come into the back. He said the land went a bit beyond the line of occupation with the fence, so they were trying not to go on the other side of the fence and were building a small retaining wall on that right side. He said they did not want to push farther over and encroach into the area being used by the abutting property. Mr. Rossi said there was a small courtyard on the northern side of the proposed addition and he was concerned about blocking the sunlight into that courtyard by a 2-story addition that was not placed as far as possible from the left side lot line. Attorney Mulligan thought property owners in that particular part of Portsmouth understood that they were living in close proximity to their neighbors, and structures were built close to lot lines, so they lost some of the light and air they otherwise would have had. He said the

garage on the abutting property went right up against the lot line but the residents managed to enjoy their courtyard. Mr. Rossi said the existing garage was to the northeast of the courtyard and would not cast a shadow as long throughout the day as on the northern side of the proposed addition. He said it was a question of whether the spirit of the ordinance was observed and setbacks regarding light and air issues. He asked why the addition could not be longer or narrower or slide over more. Attorney Mulligan explained why sliding it over more would make for a difficult and unsafe drive aisle to get in and out. He said if they made it skinnier and extended it, the driveway configuration would take up all the green space in the backyard.

Chair Eldridge opened the public hearing.

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

Fred Orlando of 180 Gates Street (via Zoom) asked if the proposed garage had living space above it and what justified the two stories. He said he was concerned about encroachment, visibility, sunlight, and their views. Chair Eldridge said there would be a bedroom above the garage that would comply with the ordinance and that the addition met all height requirements.

Bert Wortell of 245 Marcy Street (via Zoom) said he wanted to see drawings of the proposed structure. He said they recently bought their house based on the existing layout of the neighborhood buildings. Chair Eldridge said the project drawings and plans were available on line.

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

### **DISCUSSION OF THE BOARD**

[Timestamp 38:38] Mr. Rossi said he was still concerned about the impact of light and air on the neighboring property. He said having a 2-story structure that close to the lot line would be more problematic than having the existing 1-story structure. Mr. Mattson said he thought it was great that the property was getting improved and that aesthetically it would be better for the neighborhood's character. He said Attorney Mulligan explained why the proposed addition was sited the way it was. He said he saw the special condition of the property, with its narrow width of only 40 feet and the 10-ft setbacks on either side. He said the small building envelope drove a lot of the problems. Mr. Rheaume said it was a classic example of when houses are placed into an historic district and it becomes expensive to renovate a property and someone else has the means to renovate the property to the level of satisfaction that the Historic District Commission wants. He said he would not want to put a garage at the back end of the property because the entire back yard would be lost, and he asked if having a tiny one-car garage was that important. He said it was the applicant's choice, but the configuration that the applicant was asking for was driven by the modern second-floor bedroom suite. He said it came down to whether a 2-story addition that is three feet closer to the property line was going to be a significant impact to the neighboring property, and he thought it probably would not. Mr. Nies said he wasn't as concerned about the impact of the building on the next-door courtyard with sunlight because it would only have an impact early in the morning. He said he wasn't convinced that there would be a significant difference by adding the 2-story addition in the back and how often and how long that courtyard would be shaded. Mr. Rossi said the Board was

not compelled to come up with an alternative solution that avoids the problems that he saw with the proposal, and he didn't take it as a fixed given that the addition had to be the exact square footage it was proposed to be. He said he had not heard anything that convinced him that the proposal would observe the spirit of the ordinance with regard to light and space, and he could not support it.

## **DECISION OF THE BOARD**

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

[Timestamp 45:53] Mr. Nies said granting the variance would not be contrary to the public interest and would not change the essential characteristics of the neighborhood, which had many small lots and small buildings right up along property lines. He said most of the buildings had very limited setbacks in the residential area. He said he didn't see any public benefit that would be accrued by denial and did not think there would likely be a significant impact on the light and air on the next-door property. He said it arguably would create a slightly more compliant property by increasing the setback on the left side a bit. He said granting the variances would do substantial justice because it would help the applicant get rid of a decrepit structure that wasn't useful. He said there was no evidence that it would diminish surrounding property values. He said there were several specific conditions to the property, including a very small lot and a very narrow footprint where the building could be allowed to comply with the setbacks, but there were issues on the right side of the property. He said the desire to have a driveway on a street with no parking necessitated keeping a certain amount of space on that side. He said the substandard building attached to the existing addition was more of a hazard to the public than hopefully what it would be replaced with. Based on those conditions, he said there was no fair and substantial basis for applying the provisions of the ordinance to the property, so literal enforcement would result in an unnecessary hardship for the applicant. Mr. Rheume concurred. He said what was unique about the property was that it was long and narrow. He said the existing structure was situated for many years all the way on one side, which was common on many properties, and the Board had seen additions on the back ends of those properties. He said the addition from the standpoint of a general public purpose would not be visible to any great extent. He said it came down to the imposition to the closest neighboring property, which was being driven by the desire to make the addition a garage. He said most people wanted the modern convenience of a garage and a modern master bedroom setup. He asked if it really was that big of a driver to say that an additional three feet would make a significant difference. He said in this particular case, the imposition was not that great. He said the conditions of the property made it difficult for a modern addition to be in full compliance with the ordinance. Chair Eldridge agreed.

*The motion **passed** by a vote of 6-1, with Mr. Rossi voting in opposition.*

- B.** The request of **Colleen M. Cook (Owner)**, for property located at **40 Winter Street** whereas relief is needed for the following: 1) Variance from Section 10.515.14 to install a mechanical unit 3.5 feet from the side property line whereas 10 feet is required. Said property is located on Assessor Map 145 Lot 96 and lies within the General Residence C (GRC) District. (LU-24-74)

## **SPEAKING TO THE PETITION**

[Timestamp 51:30] The applicant Colleen Cook was present and said there were limited options on her nonconforming lot that made it difficult to find a space to place the mini split ducts in. She said no one would see the unit due to the existing fence. She reviewed the criteria.

[Timestamp 54:48] Mr. Rheume said the applicant was only asking for six additional inches from the side of the house but typically there was a distance that a condenser had to be. Ms. Cook said her unit installer said the Board would have that information. Mr. Rheume said his concern was that typically a unit had to be set back a certain distance from the house to get proper airflow and thought the applicant might need more relief than was asked for. Ms. Cook asked if she could request 24 inches. Chair Eldridge said it had to be advertised. Mr. Rossi said the Board didn't have enough information to take action, and it was further discussed.

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. Mattson moved to **grant** the variance for the petition as requested, seconded by Mr. Mannle.*

[Timestamp 1:01:18] Mr. Mattson said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said it would not alter the essential characteristics of the neighborhood or threaten the public's health, safety, or welfare and would not conflict with the purpose of the ordinance. He said substantial justice would be done because the benefit to the applicant would not be outweighed by any harm to the general public. He said granting the variance would not diminish the values of surrounding properties, noting that adding more energy-efficient heating and cooling to the property would not harm any other properties and that the unit was quiet. He said literal enforcement of the ordinance would result in unnecessary hardship due to the special conditions of the property, which included that the lot was undersized and as big as some houses were. He said the house's placement limited the locations to place the mini split. He said there was no fair and substantial relationship between the general public purposes of the ordinance and their specific application to the property and that the proposed use was a reasonable one. Mr. Mannle concurred and had nothing to add.

[Timestamp 1:03:04] Mr. Rheume said he would support the motion but was fearful that there could be a 2-ft setback instead of a 3-1/2 one when the contractor worked everything else out. Mr. Nies said he had the same concern and asked if the applicant could apply for an amendment. Chair Eldridge agreed but said it would be a new application with all the costs. It was further discussed. Mr. Mattson said even if the Board approved the variance, the applicant might have to come back, but he thought granting the variance was the most beneficial option for the applicant.

*The motion **passed** by a vote of 6-1, with Mr. Rossi voting in opposition.*

- C. The request of **Stephen A. Singlar** and **Kathryn L. Singlar (Owners)**, for property located at **43 Holmes Court** whereas relief is needed to amend a Variance granted on December 20, 2022 to demolish the existing dwelling and construct a new single-family dwelling which requires the following: 1) Variance from Section 10.531 to allow a 16-foot front yard where 30 feet is required. Said property is located on Assessor Map 101 Lot 14 and lies within the Waterfront Business (WB) and Historic Districts. (LU-22-227)

### **SPEAKING TO THE PETITION**

[Timestamp 1:07:57] Attorney Derek Durbin was present on behalf of the applicant, with the owners Stephen and Kathryn Singlar. He said the Board granted a variance in December 2022 to demolish the home and build a new one, but the applicant then applied for a wetlands permit and the New Hampshire Department of Environmental Services (NHDES) made a condition that the home be moved closer to the front boundary of the property by one foot. He said the applicant was asking for a 16-ft front yard setback variance to satisfy that requirement. He explained that the house was in poor condition and the property did not have a true front yard, was landlocked with no access to a public street, and was accessed only through a private drive by 39 Holmes Court, which the applicant also owned.

[Timestamp 1:10:40] Mr. Mannle asked what the setback from the water was in the zoning. Attorney Durbin said the proposed setback from the rear boundary was 21.2 feet and that the NHDES wanted 22 feet. Mr. Nies said the loss of the one-ft setback was described by the applicant as inconsequential in the front, but he thought taking off the back of the house would compromise the integrity of the design of the house and was like removing about 24 square feet of area from the house. He asked Attorney Durbin to elaborate on why he thought removing one foot would compromise the plan's integrity. Attorney Durbin said the architect informed him of it and that they were at 1,297 finished square feet. He said the plan was designed at the minimal amount of square feet to accommodate everything a single-family home would need. He said the house could not be raised and had been squeezed in as much as possible and was smaller than anything else in the neighborhood. Mr. Rossi said the same owner owned 39 Holmes Court, and part of the rationale for the 41 Holmes Court was that the property was in poor condition. He asked if there were future plans to expand 39 Holmes Court, which also seemed to be in poor condition. Mr. Singlar said 39 Holmes Court would get remodeled as it was and would not be pushed closer to the current property. Attorney Durbin then reviewed the criteria and said they would be met.

The Board had no more questions, and 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 variance for the petition as presented and advertised, seconded by Mr. Rheume.*

[Timestamp 1:21:52] Mr. Rossi said the primary purpose of his looking at the property that day was to assure himself that the conditions that existed at the time the Board approved the original variance were still the same. He said nothing substantial had changed and that the same considerations the Board had back then were still relevant. He said what caused the Board the most consternation at the time was the nonconforming use of the lot zoned in the Waterfront Business District. He said with regard to observing the spirit of the ordinance, the lot, although zoned in waterfront business, was not able to be utilized that way because it was landlocked and there was no good way to get ingress and egress to the property for anything that came in off the Piscataqua River, so even though the Waterfront Business zoning reflected a legitimate public interest, granting the variance in this case would not be contrary to the public interest because the lot could not be used in that manner anyway. He said granting the variance would do substantial justice because the lot currently and had for centuries been used as a residential lot, and there would be no loss to the public by continuing that use that would outweigh the loss to the applicant by insisting that the use be changed. He said granting the variance would not diminish the values of surrounding properties. He said that was where the additional one foot moving closer to the front property line came into play and had an impact only on 39 Holmes Court, which was owned by the same owner who attested that moving the structure one foot closer to 39 Holmes Court would not have a deleterious impact on the value of that property. He said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship, noting that the property itself had many hardships including the landlocked nature of the lot and the fact that there wasn't enough room to solve the problems presented by the NHDES in their request to get a foot farther away from the water line without granting the variance. He said failure to grant the variance would put the Board in conflict with other considerations that were important for the proper utilization of the property, therefore being strictly in observance of the ordinance would be an unnecessary hardship.

Mr. Rheume concurred. He said, regarding the hardship, the neighboring property at 39 Holmes Court was right up against the property line and was GRC, so the setback would be five feet vs. the required 30 feet of the Waterfront Business zone. He said the last time the Board considered it, their concern was allowing a residential use in a waterfront business zone. He said if it was zoned as a residential parcel and not as a waterfront business parcel, which the Board concluded last time was not the correct zoning for it, it would be allowed to be much closer. He said that, compared to the existing nearby structures, it would look like it had a huge setback even at 16 feet. He said the other part of the hardship was that it was butted up against the water and had to go through the permitting process that did not turn out favorably for the applicant. Mr. Mannle noted that it was only a one-foot adjustment requested by a State agency of a previously-approved application.

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

- D.** The request of **366 Broad Street LLC (Owner)**, for property located at **366 Broad Street** whereas relief is needed to demolish the existing multi-family and single-family dwellings



and accessory structure and reconstruct four single-family dwelling units, which requires the following: 1) Variance from Section 10.513 to allow more than one dwelling per lot. Said property is located on Assessor Map 221 Lot 68 and lies within the General Residence A (GRA) District. (LU-24-75)

### **SPEAKING TO THE PETITION**

[Timestamp 1:28:40] Attorney Chris Mulligan was present on behalf of the applicant, along with the applicant Michael Green. Attorney Mulligan noted that the applicant has the property under contract and intended to redevelop it. He reviewed the petition in detail and reviewed the criteria.

[Timestamp 1:43:43] Mr. Mannle asked if it would be condo ownership. Attorney Mulligan agreed. Mr. Mannle said the lot was big enough to do a planned unit development and asked why that could not be done. Attorney Mulligan said the development costs would be significantly higher. Mr. Nies said he struggled with why the applicant was not trying to make the property completely compliant with the ordinance. He said there could be a fully compliant structure and asked what the special conditions of the property were that could make that not possible. Attorney Mulligan said the test was unnecessary hardship and not impossibility, and the analysis had to be whether it was necessary to require a 4-unit apartment building or dwelling in a single contained space on a lot that large, or if there was some underlying benefit that overrides the applicant's desire to develop the lot in a certain way. He said there were already significant nonconformities in the property, and the fact that it may be possible to obtain a special exception for a 4-unit structure highlighted why he thought it was necessary for them to try to obtain variances. He said they could get four units on the property no matter what. Mr. Nies said it was a nonconforming lot that violated several setbacks, and the proposal was to replace it with a nonconforming lot that would have two more residential buildings. He asked what special conditions of the property that made that necessary. Attorney Mulligan said the lot was conforming and the structures were not. He said the property was four times the size of the lot area per dwelling requirement and much larger than those in the immediate neighborhood. He said the existing built environment on the property was a special condition and nonconformance that cut against requiring strict conformance with the one specific provision. He said they would eliminate all those nonconformities but required relief from that one specific provision.

[Timestamp 1:49:10] Mr. Rossi said there was nothing nonconforming about the main building and all the nonconformance came from the garage, carriage house, and the other structure in terms of setback. He asked why it was necessary to destroy the existing structure. He said the neighborhood had a certain look and characteristic to it and thought the existing main structure would be all that would be seen from the roadway, and not keeping it would change the neighborhood's characteristics. Attorney Mulligan said the main structure had five dwelling units in it, so that structure, even though it complied with the setbacks, tipped the lot area per dwelling calculation. He said part of the challenge of the property was getting it back to the way it was originally developed, which was not a possibility due to the way it was carved up.

Chair Eldridge opened the public hearing.

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

Vincent Prien of 400 Broad Street said there was ledge and asked how it would be gotten rid of. Chair Eldridge said those decisions would be made as the project went through further review.

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

[Timestamp 1:53:04] Cathy Hodson of 616 Central Road, Rye, said she owned the property at 389 Broad Street. She said the applicant's 1900 house was a representation of Portsmouth at an earlier time. She said a subdivision of four homes would be a significant change to the neighborhood's character and the new houses would be expensive, while the existing apartments were most likely affordable. She said she also had an issue about the trees being removed and tossing building materials into a landfill. She said the proposed project could set a precedent.

Sally Mulhern of 60 Pinehurst Road said she did not see that the planned four houses would be unique or interesting. She said the neighborhood was a beautiful one, the trees were tremendous, and demolition was permanent. She said a similar property down the street was denied.

Margot Doering of 300 Jones Avenue said there were two basic premises in the request: a nonconforming lot is a hardship on the developer and a nuisance to the neighborhood, and any change that would result in fewer nonconformities should justify a larger nonconformity. She said she disagreed. She said there was nothing to suggest that bringing some aspects of the property up to code would suit the neighborhood any better. She said granting the variance would double the number of freestanding buildings from two to four and increase the number of bedrooms from 11 to 16, which was almost a 50 percent increase, as well as add a large driveway. She said that was not a hardship and that she found it egregious that a developer who had no plans to live on the property would claim that the existence of those known zoning requirements were imposing a hardship on his ability to make an economic profit. She said the developer could choose a different property or a different plan, like retaining the primary house and having different options for the back of the property that would be more in keeping with the character of the street. She said if the trees were cut down it would reduce the values of surrounding properties because the replacement trees would take 20-40 years to replace the current shade, privacy, and natural habitat. She said there was no evidence that construction and energy efficiency improve the values of existing homes and that one could argue that people want to live in the neighborhood because the homes are quality built ones. She said the applicant's property was nonconforming in ways that had not bothered the neighborhood in over a hundred years, and to permit serviceable dwellings to be torn down and thrown into a landfill would be against the City's sustainability goals.

Jim Lee of 520 Sagamore Avenue said the project would change the neighborhood's character and would set a precedent for other developers, leading to a domino effect. He said the current zoning was to maintain a specific density of housing, and allowing larger homes would contradict that zoning. He said there was no hardship, noting that the hardship had to be with the land and not for the developer's gain. He explained why it was also inconsistent with the 2025 Master Plan.

Lena Wyand of 65 Pinehurst Road said a similar project at 482 Broad Street to build four freestanding dwellings in 2014 was denied because the proposal was not in keeping with the neighborhood. She said the proposed project had no hardship. She read two letters from neighbors

at 35 and 51 Pinehurst Road who said demolishing the home would change the streetscape of homes, reduce the number of available dwelling units, and look like a subdivision.

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

[Timestamp 2:17:09] Attorney Mulligan said the property was not in the Historic District and the owner would be within his rights to make substantial changes up to and including razing the structure. He said one of the criteria before the Board was whether the project resulted in a diminution of values. He said larger and more expensive housing would increase the values of surrounding properties. He said the owner could build an enormous single-family dwelling, given how large the lot was. He said the failed project of many years ago that was mentioned was a single-family residence changing to a multiple townhouse and that the zoning had changed considerably since then. He said the aesthetic preservation of the property was not within the Board's purview. He said the applicant met all the criteria for the one specific variance requested.

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

### **DISCUSSION OF THE BOARD**

[Timestamp 2:27:31] Mr. Mannle said he did not see the hardship because the property was conforming other than density. He said the applicant said he could build four units by special exception on the large lot, but everything on that side of Broad Street was huge and he didn't see the special conditions owing to the property that would cause a hardship. He said that, given the nature of the neighborhood on that side of the street, the applicant's lot was not much different than any lot on that side, and placing four single houses on that side of the lot would change the neighborhood's character. Mr. Rossi said there was no exact legal definition of the essential characteristics of a neighborhood, which meant that the Board had discretion and understood what the character of the various neighborhoods in Portsmouth were because the Board was comprised of City residents and was charged with bringing that understanding into their evaluation of variance requests. He said it was his assessment that the proposal would alter the essential characteristics of Broad Street. He said the existing primary home was a fitting essential component of the neighborhood's characteristics and thought the application failed on maintaining or not altering the essential characteristics of the neighborhood, so he could not support it. Ms. Record agreed and said that what looked like a mini subdivision with four houses would not look like what was on that street. Mr. Mattson asked how unlikely it would be for the Board to approve the petition if there were already four family homes there and seven units were proposed, five in an attached structure and two in a separate one. Chair Eldridge agreed. She said there were huge lots on one side of Broad Street and was concerned about what would happen when the large houses started to fall apart or go into estates and someone wanted to do something with them. She said the way the project broke up the streetscape did change the essential look of the neighborhood, and because there were so many other large lots on Broad Street, she didn't think the property was unique or had a hardship. Mr. Rheume said that, outside of the Historic District, there was very little that allowed the City to protect an old home from demolition and that the City could only do what it could through enabling State legislation. He said the nature of the existing number of dwelling units on the property was probably the type of housing the City needed more of, but that it did not conform

with the zoning. He said the Board's job was not to preserve nonconformances but to help the applicant move closer to the zoning. He said allowing multiple units on a single property and putting four houses in each corner of the property flew in the face of everything the ordinance was trying to accomplish. He said the proposed homes would be significantly closer than the existing ones and the bulk of them would be substantially away from the property line. He said the only major incursion in the existing buildings was the garage, which was quite close to the property line, but that was a characteristic of the neighborhood. He said the applicant made positive arguments regarding hardship, but he said there could be some rehabilitation options that would more closely mimic what existed. Mr. Nies said he still struggled with the special conditions of the property that distinguished it from others in the areas. He said there were several properties in the area that were not quite as large but were large, and there was at least one that was larger and had nonconforming buildings on it, so he was not convinced that there were special conditions that distinguished the property from others. He said even if there were, it was not clearly established that those special conditions rose to the level that the ordinance requirement for a number of residential buildings needs to be waived in order to enjoy the property. He said he did not believe that the Board saw a reason why four buildings should be allowed on the applicant's lot. Mr. Nies also noted that even the applicant's attorney admitted it was possible to fully comply with the ordinance by putting four residences into one building consistent with the provisions of the zoning ordinance. Therefore, the property could be used in strict conformance with the ordinance.

*Mr. Rossi moved to **deny** the application for a variance as presented and advertised, seconded by Mr. Mannle.*

[Timestamp 2:43:36] Mr. Rossi said for a variance to be approved, it must satisfy all the criteria, and for it to be denied, it must only fail one criteria. He said the consensus of the Board was that the proposal was not consistent with the characteristics of the neighborhood and would alter those fundamental characteristics of the neighborhood, per Sections 10.233.21 and .22 of the ordinance. Mr. Mannle concurred and said the petition also failed the hardship test. Mr. Rheume said he would support the motion, noting that the spirit of the ordinance was combined with the characteristics of the neighborhood. He said there was a reason why the ordinance stated that there would be one dwelling unit on a property and that the Board had to be careful about allowing exceptions.. He said the applicant argued that there was already a second structure on the property, but that structure was way in the back of the property and had a very modest size and was very different than what was proposed.

*The motion to deny the variance **passed** unanimously, 7-0.*

- E. The request of **Victoria Willingham** and **Robert Bowser (Owners)**, for property located at **692 State Street** whereas relief is needed for the following: 1) Variance from Section 10.515.14 to install a mechanical unit 3 feet from the side property line whereas 10 feet is required. Said property is located on Assessor Map 137 Lot 6 and lies within the General Residence C (GRC) District. (LU-24-67)

## **SPEAKING TO THE PETITION**

[Timestamp 2:46:38] The applicant Robert Bowser said he needed a standby generator in his yard. He said the nearby houses were all built nearly to the property line, and the only appropriate location for the unit was behind the house because the buildings were so close together. He said the unit would not be seen from the funeral home on one side of his lot or the residents on the other side because it would be shielded by a fence and granite steps. He noted that the funeral home owner had no objection. He reviewed the criteria and said they would be met.

The Board had no questions, and 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 variance for the petition as presented and advertised, seconded by Mr. Mannle.*

[Timestamp 2:50:05] 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 proposed location for the generator was behind the residence and would not be observable or heard from the street, so there was no public interest to be had by denying the variance. He said substantial justice would be done because having the generator located behind the home would not cost the public anything, so there would be no loss to the public that would be considered as a counterbalance to the loss of the applicant should the variance be denied. He said granting the variance would not diminish the values of surrounding properties, noting that the applicant took the time to speak to the neighbor closest to the generator and the Board had communication from that neighbor stating that the generator would not be problematic for him. He said that was evidence that the nearby property owner saw no diminution in the value of his property by the generator's installation. He said the property's hardship was the narrow and deep nature of the lot and the location of the house. He said the applicant enumerated safety considerations with regard to the location of the generator and said it made no sense to put the generator in the middle of the yard far from the house. He said special conditions like the shape of the house, the location of the windows and the ingress and egress, and the location relative to the property lines weighed in favor of approving the application and locating the generator in the proposed spot. Mr. Mannle concurred. He said the applicant was putting the unit at the back of his house and that it would not be in any light or air areas.

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

### **III. ADJOURNMENT**

The meeting adjourned at 9:54 p.m.

Respectfully submitted,

Joann Breault  
BOA Recording Secretary