

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

7:00 P.M.

July 16 2024

MEMBERS PRESENT: Beth Margeson, Vice-Chair; Members David Rheaume; Thomas Rossi; Paul Mannle; Jeffrey Mattson; Thomas Nies; and Jody Record, Alternate

MEMBERS EXCUSED: Chair Phyllis Eldridge

ALSO PRESENT: Stefanie Casella, Planning Department

Chair Eldridge was excused for the evening and Vice-Chair Margeson was Acting Chair. Alternate Ms. Record took a voting seat for all petitions.

I. APPROVAL OF MINUTES

A. Approval of the June 18, 2024 and June 25, 2024 meeting minutes.

Acting Chair Margeson abstained from both votes because she was not present at those meetings.

*The June 18 meeting minutes were unanimously **approved** as amended, 6-0.*

The sentence on p. 4: “He said the setbacks were to ensure that people didn’t have view obstructions, and without an enclosed front porch, the view would still pretty be open.” was changed at the end to read ‘would still be pretty open’.

*The June 25 meeting minutes were unanimously **approved** as presented, 6-0.*

II. NEW BUSINESS

A. The request of **Dawn P. Sirois (Owner)**, for property located at **485 Ocean Road** whereas relief is needed to demolish the existing rear deck and construct a new screened in porch which requires the following: 1) Variance from Section 10.521 to allow 14% building coverage where 10% is allowed; and 2) Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 283 Lot 32 and lies within the Single Residence A (SRA) District. (LU-24-103)

It was noted that there was an error on the building coverage on the Staff Memo. Ms. Casella said the existing building coverage was 13.69 and not 17 as stated in the Staff Memo.

SPEAKING TO THE PETITION

[Timestamp 4:08] Jeff Kissell of Dockham Builders was present on behalf of the applicant to review the petition. He said a building permit was filed for the deck in May but then he was notified that the home was in the SRA zone and demolition of the deck to be rebuilt was not allowed, which was the reason the variances were necessary. He said 50 square feet would be added to the lot coverage, going from 13.75 percent to a bit over 14 percent. He reviewed the criteria.

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

[Timestamp 9:32] Mr. Rossi said the Board was dealing with a difference in decimal places in terms of lot coverage and thought it was bewildering that the Board even had to discuss a rounding issue because it was currently 14 percent and the new coverage was 14 percent rounded down. He said it was an unfortunate use of the Board's time and the applicant's time. Acting Chair Margeson said the building coverage is 10 percent and a nonconforming use. Mr. Rossi said the change from the existing nonconformity was de minimus. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said there would be no impact on the safety or general wellbeing of the public in making the minor change in the lot coverage. He said substantial justice would be done because there would be no conceivable loss to the general public by replacing the current structure with the new structure, which is behind the main house, not visible from the road, and approximately the same size as the existing structure. He said granting the variances would not diminish the values of surrounding properties because there would be no real change of any substance to the current condition, and the values of the surrounding properties were based on the current condition of the property. Regarding the hardship, he said the applicant's representative pointed out that the lot is a sub-sized one and any change short of completely demolishing and eliminating the structure and replacing it with something else would be out of conformance. Mr. Rheume concurred and said the applicant made an excellent argument that the parcel is an SRB sized parcel, which calls for a depth of 100 feet. He said the parcel was 100'x100' and doesn't have the full 15,000 square feet that an SRB parcel would, but it's far more like an SRB property than an SRA one, and that allows the 20 percent coverage, which made sense for a parcel of that size. He said he felt bad that the resident had to go through that process just to change an

open deck to an enclosed porch with no impact on the zoning characteristics, noting that it cost the applicant time and money, and that he wished there were a better way.

The motion passed unanimously, 7-0.

- B.** The request of **Avi Magidoff (Owner)**, for property located at **133 Pearson Street** whereas relief is needed to construct a car port which requires the following: 1) Variance from Section 10.573.20 to allow a 4 foot side yard where 8.5 feet is required. Said property is located on Assessor Map 232 Lot 103 and lies within the Single Residence B (SRB) District. (LU-24-107)

SPEAKING TO THE PETITION

[Timestamp 14:00] The owner Avi Magidoff was present to review the petition. He said he wanted a car port because the driveway was 120 feet long and the City did not want to plow it because it was too narrow. He said the City also owned the south side of the property as a deed for snow removal for Pearson Street. He said it was an unusual situation because of the way the property was spaced and that he was at the end of a dead end street. He said the car port would be open and congestion would not be an issue. He said the closest buildings were 121 and 126 State Street and the church was 300 feet away. He said he would also remove 800 square feet of the asphalt driveway and convert it back to a natural state. He said the project would also allow him to convert his garage into a bedroom on the ground floor. He said there were no safety or water runoff issues and that the neighbors were in support. He reviewed the criteria.

[Timestamp 23:41] Mr. Rheume said he didn't see any indication on MapGeo that the City owned any portion of the applicant's property and asked what the basis was for that assertion. Mr. Magidoff said there was a deed for the City to be able to plow that part of the property and that it was also included in the church's deed. Mr. Rheume asked if the City had an easement. Mr. Magidoff said he didn't know. He pointed out on the map where the snow accumulation area was. Mr. Mattson asked why the applicant decided to have the car port on the side of the driveway closer to the side yard setback instead of closer to the house, which would have increased the side yard. Mr. Magidoff said he wasn't aware of that but that there was 19 feet from the edge of the stone wall to the edge of the property, and if he requested 12 feet, it would only give him a 7-ft variance instead of the 8.5 variance he requested. Mr. Mattson clarified that the new location of the car port would be the new end of the driveway and that Mr. Magidoff would not expect to be able to get past it. Mr. Magidoff agreed. Mr. Nies verified that the City had an easement and that it was registered at the Rockingham County Registry of Deeds.

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

[Timestamp 29:27] Mr. Mattson said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said the proposed use would not conflict with the explicit or implicit purpose of the ordinance and would not alter the essential characteristics of the neighborhood, threaten public health, safety, or welfare, or injure public rights. He said it was a minor request for an open car port that followed 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 or other individuals. He said the car port on the dead end street would be far away from any neighboring properties and would have a minimal visual change. He said granting the variance would not diminish the values of surrounding properties, noting that there had been no expert testimony to suggest otherwise. He said the applicant showed that other garages in the neighborhood had not been harmful to property values. He said literal enforcement of the ordinance would result in an unnecessary hardship because of the special conditions of the property that distinguished it from others. He said there was no fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property, and the proposed use was a reasonable one. He said it was a reasonable request to have an open car port in a driveway, and the unique aspect of the property was that it was on a dead end street, with minimal street frontage, and the side yard butted up against a very large church property. He said the purpose of the side yard was to preserve light, and privacy would be maintained. Mr. Nies confirmed that the City had a recorded easement on the adjacent property that was registered in the Rockingham County Registry of Deeds. Mr. Rheume agreed that the property was unique. He said it was listed as being on Pearson Street but he thought it was probably created for the paper street that was never completed and that the property was reconfigured at some time to be able to be built upon but went out to Pearson Street instead of the paper street. He said the easement helped in terms of any concerns with the neighboring property and that the structure requested was very modest. He said it might be possible to force it a bit farther away from the property line but thought there was nothing in the public purpose of the ordinance that indicated that it was worth putting the applicant through that. He said the proposal was reasonable and would be a positive contribution to the neighborhood. Acting Chair Margeson noted that the Board received 10 letters of support from the neighbors. Mr. Nies said he had a concern about whether access of emergency vehicles to the property would be restricted, but it was resolved by the fact that the car port would be set back 30 feet from the end of the street and there would be enough room for any vehicle to get through.

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

C. The request of **Bruce R Carll (Owner) and Patrick and Wendy Quinn (Applicants)**, for property located at **0 Melbourne Street** whereas relief is needed to construct a single residential unit on a vacant and undersized lot which requires the following: 1) Variance from Section 10.521

to allow a) 6,197 sf of lot area where 15,000 sf are required, b) 6,197 sf of lot area per dwelling unit where 15,000 sf are required, and c) 50 ft of frontage where 100 ft are required. Said property is located on Assessor Map 233 Lot 54 and lies within the Single Residence B (SRB) District. (LU-24-109)

SPEAKING TO THE PETITION

[Timestamp 35:10] Attorney Chris Mulligan was present on behalf of the applicants Patrick and Wendy Quinn and the owner Bruce Carll, who were also present along with Mr. Carll's attorney Colby Gamester. Attorney Mulligan reviewed the petition in detail, noting that the lot was created by a subdivision in 1918 and had been a standalone lot since then. He said it had not been merged voluntarily or involuntarily but was deficient by today's zoning standards. He said the only relief needed was 50 feet of frontage and under 6,200 sf of lot area and that any use of the lot would require the same relief. He noted that there was a fair amount of material submitted to the Board in opposition to the project but that a lot of it addressed matters that were outside the Board's jurisdiction. He said what was proposed was within the allowed building height and respected all required setbacks and would not set a precedent. Out of the 30 property owners in opposition, he said only five of those properties were fully compliant lots and only 10 had adequate frontage. He said the proposal met environmental factors and safety concerns. [Timestamp 43:03] Attorney Mulligan reviewed the criteria in detail. He also noted that some of the comments made in opposition had to do with the 3-story design, so he handed out a tax card for the 44 Melbourne Street property to the Board, a property owned by someone who was in opposition. He said it was a lot with 50 feet of frontage and almost the same lot size as the applicant's lot, with a full 3-story home and had been in place since 2004 yet had no negative effects on the neighborhood. He said the property owner had the right to develop the open space.

[Timestamp 50:28] Mr. Mannle said the 44 Melbourne Street house was built in 1917 and the addition to the third floor was done in 2004, but the zoning had changed since then. Mr. Rheume said Attorney Mulligan had noted that Lot 233-54 had been an independent lot since it was created, and he asked if it had common ownership with Lot 233-55. Attorney Mulligan said that had been the case for a significant time. He said the lots had never been merged voluntarily by the owner or involuntarily by the City. Mr. Rossi asked how Attorney Mulligan knew that the 50-ft frontage of the property he referenced had no impact on the neighboring ones. Attorney Mulligan said the property values in that neighborhood had not gone down from the time the improvements were made. Mr. Rossi concluded that it was Attorney Mulligan's opinion that as long as the property values were going up, it didn't matter at what rate they went up. Attorney Mulligan said pegging property values was an art and not a science, and was always possible that property values would fluctuate depending on how development occurred, but he said the neighborhood had a significant amount of substandard lots by today's zoning and there was no evidence that any of those lots had a negative impact on surrounding property values or values in general in the vicinity.

Acting Chair Margeson opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

[Timestamp 54:21] Attorney Duncan MacCallum was present on behalf of Sheila Reardon of 105 Essex Street. He said he was against the proposal and also spoke for the 35 or so other residents in the vicinity who signed the statement in opposition. He said the applicant was telling less than the full story by calling the property a standalone lot. He said that lot and the one next to it were owned by the same owner and the two properties had been owned by the same family and treated as a single property for at least 60 years. He said the two properties combined were about the same size as most of the surrounding ones. He noted that both properties were conveyed by the same deed and it had always been the intention that the two properties would be for one unit.

William Windham of 57 Rutland Street said he did not oppose the petition and did not see how it would change the neighborhood's character much.

Sheila Reardon of 105 Essex Avenue said she was against the proposal. She said she bought her home in 2009 because she loved the environment of the quaint neighborhood. She said there was nothing like the proposed structure in the neighborhood. She said it would devalue her property and affect her privacy, light and air, and old trees would also be affected.

Kate Beckett of 24 Sheffield Road said she opposed the project; she said the applicant's backyard was not a big one and they wanted to put a 3-story building on it. She said her backyard got very little sun and that the project would block more sun and change how her family lived in the house.

Charles Cormier of 227 Melbourne Street said he agreed with everything Attorney Mulligan said. He said the applicant owned the property and had the right to develop it and he was in support.

Kelly Kahoe of 44 Melbourne Street said she was surprised the lot was even a buildable one and thought the 3-story structure would change the character of the neighborhood.

Mary Chavez of 80 Pine Street said she opposed the project because it was excessive and the disparity was striking. She asked what would happen to the existing home on that lot and whether another 3-story structure would be built. She said the structure would set a precedent.

Rose Sulley of 61 Sheffield Road said she was against the project. She said the total lot size would be 12,579 sf, which was about the median size of the abutters' properties. She said the variances if granted would allow a tiny lot with potentially 35 feet of structure with 50 feet of frontage.

Jim Prendergrast of 70 Sheffield Road she he was against the petition because the lot size, frontage and so on were inadequate.

Mike Wierbonics of 161 Essex Street said he was against the proposal, noting that the lot had been a common one for 60 years and putting a house there would change the neighborhood and remove some green space. He said the neighborhood had a mix of houses that were part of the character from those times and that the proposed house would look like a multi-family one.

Attorney Colby Gamester on behalf of the owners said Mr. Carll supported the application and knew the market and property very well. He said 0 Melbourne Street was a preexisting nonconforming lot of record and that the Carll family had paid two separate tax bills on each property. He said the zoning ordinance applied dimensional regulations to the underlying zoning district at large, which applied to every lot in that district. He said the property was not an outlier and that there were other 50'x100' lots in the area. He said it had enough room to build a single family structure that would still afford privacy between the lots. He said the common ownership was of no consequence and there was nothing stopping Mr. Carll from conveying one lot of the other lot because they were separate lots of record and could be conveyed separately.

Johanna Soris of 14 Sheffield Road said she was a direct abutter and opposed to the project. She compared Mr. Rheume's analysis at an August 2021 hearing of 0 Islington Street, where he said that the proposed structure was in keeping with the neighborhood's characteristics and would keep the rhythmic sense of Islington Street, but he said that if the proposal were on Melbourne Street, he would be more hesitant to approve it because the homes on Melbourne Street were considerably wider. She cited another example of a request for an enclosed porch that was denied because every other porch on the street was open. She said the proposed structure was three stories high and looked like a freestanding garage with a condo unit on top, and that there was no such structure in the immediate area. She said it would disrupt the rhythmic nature of the neighborhood.

Dan Freund of 37 Prospect Street said he was in support of the project because he felt that the property owner had a right to develop the property in a respectful but progressive manner.

Jocelyn Chavez said she was a local realtor who represented the buyers. She said a new home always improved the values of surrounding homes.

Travis Billingham said he was a real estate agent who represented the Carlls. He said the structure would fall within the zoning ordinance with the exception of the two variances requested. He noted that Mr. Carll had been paying taxes on the two properties and that his burden far outweighed any concerns of the neighborhood. He said the new home would improve the neighborhood.

No one else spoke, and Acting Chair Margeson opened the session for Second Time Speakers.

Second Time Speakers

[Timestamp 1:30:36] Attorney MacCallum said the owners had always treated the two pieces of property as a single one and the backyard was always the backyard. He said that was consistent with the neighborhood's character of good-sized properties with single family homes and space in-between consisting of large side and back yards. He said if the variances were granted, there would be two buildings that are too big for the two side-by-side pieces of property, with no back yards, side yards, or front yards. He said it would be inconsistent with the spirit and purpose of the ordinance, which was to prevent overcrowding, and that the proposal should be denied.

Kelly Cioe of 44 Melbourne Street said aesthetics mattered. She said the neighborhood did not have a lot of garages, and if a townhouse style structure was put on top of a garage, it would be a big difference. She said her concern was that it would set a precedent.

Charles Cormier of 227 Melbourne St said a lot of the arguments were very subjective and that the owner had the right to build. He asked how character could be described and thought there was bad character everywhere that a neighbor couldn't or shouldn't control.

Johanna Soris of 14 Sheffield Road said the character of the neighborhood was the same way that it was decades ago.

Sheila Reardon of 105 Essex Avenue said the variances asked for were for the house to be built on less than half of what was required and that the structure would not fit in the neighborhood. She asked that the variances be denied so that the neighborhood could keep its beautiful character.

Attorney Mulligan said the suggestion that if the application were approved, the result would be a property that has no yards was completely false. He said the zoning ordinance regulates the exterior dimensions of buildings through setback, height, lot coverage, and open space requirements and that the applicant's proposal complied with all of those. He said the abutters did not like the proposed design and would prefer to see the lot remain underdeveloped because they enjoyed the open space. He said no matter what got proposed for the lot, it would require the same variances for whatever use and whatever design. He said it was like a textbook definition of hardship.

Attorney MacCallum said he rebutted that remark because the project did not comply with all the zoning restrictions, which were designed with a 15,000 sf plot in mind. He said the variance requests should be denied.

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

DISCUSSION OF THE BOARD

[Timestamp 1:56:12] Mr. Mattson said if the lot wasn't already an existing one, he would not approve it, but it did exist and he was amazed that what was proposed was able to fit entirely within all the side yard setbacks and meet the proposed coverage. He said it came down to the undersized lot and whether anything can be done to it and how that applies to the hardship, particularly how the property can't be used in any reasonable way. Mr. Mannle said the Board had seen other applicants on the other side of Middle Road that had turn-of-the-century development plans and legitimate lots that were 50'x50' or 50'x80'. He said that would be a great argument if that's how the development proceeded and there were houses on each of those lots and they were separate lots. He said the current zoning map didn't show anything like that except for a few exceptions for the Daniels Park's development to give that argument validity. He said the Board approved applications as presented, which included the design, and he thought the proposed dwelling was incongruent with the neighborhood. Mr. Rossi said the comments for and against had been insightful and the

attorneys' arguments on both sides were well framed. He said the Board's task was to weigh opposing aspects of the case and the merits on either side of it and come up with a fair balance to get to a decision. He said he was respectful of individual property rights, the tax history, the family's investment and their right to monetize it but on the other hand, he said zoning exists and counterbalances the unabridged property rights that one might want in the more libertarian viewpoint of the world and that the zoning ordinance ensured that whatever was done with the property fit in with the objectives of the City Council. He said there was the perpetual issue of what is the essential characteristics of a neighborhood and how it's defined. He said there were somewhat subjective elements of judgment that the Board had to make, and he thought that the Board was sometimes advised that the only thing they could consider in regard to the essential characteristics of the neighborhood was the intended use. He said in this case, it's a single family use but he thought there was legitimate consideration to be had around the density and objective of the SRB zoning, which is to develop low-to-medium densities of single family residences with one to three residences per acre. He said the applicant's property had a density that was not consistent with the purpose of SRB zoning, and he also felt that it was inconsistent with the character of the area as it was developed. He said the lots were created in 1918 but buildings looked a lot different then and that it was interesting to note most of the relationship that exists between how buildings and expectations were in 1918 and 2024. He said people weren't expecting to max out the lots back then, so he thought current standards should be applied.

Mr. Rheume said he was quoted and felt that the project had some similarities to a previous application a few years ago for Islington Street. He said he felt at that time that it was a more simple ask and had much more of a rhythm, but in the end what was built was in keeping with the micro neighborhood. He further explained it and said the applicant's area was all SRB and not a transitional neighborhood. He said people back in the day bought up two lots and made their homestead larger, so a lot of the lots were substandard but they were more consistent in regard to street frontage, lot depth and so on and still not fully compliant. He disagreed with the applicant's representative that there was no other usable thing that could be done with the lot. He said it would require merging the two lots but that they could have a higher structure on it, like a garage with an ADU. He said because the proposed structure was on a substantially large lot compared to the SRB, there was only one direction to go and that was up, which was something that would stand out as being different in the neighborhood. He said he believed it was out of character with the neighborhood as it was currently configured and thought the applicant could do other things, but for the lot to become buildable, it would create something that didn't look like other homes in the neighborhood, and he thought that was substantial enough to say that it wasn't meeting the criteria. Mr. Nies said one of the issues is what is the essential character of the neighborhood. He said it was a neighborhood that was developed over a century or so ago, with homes built in 1917, several in the 1950s, and one built recently. He said he looked at the proposed structure as a home that was designed in the 2020s and didn't think it was the Board's mandate to judge how a property owner handled individual lots. He said it would be a different story if the City thought the two lots should be combined. He said the property owner had property rights, and he thought his proposal met all the requirements of the zoning ordinance. He said he wasn't sure that the lot could be used effectively without the variances proposed, at least not for a single family residence that was the

main use of properties in the area. Acting Chair Margeson said the application was a different one and the lot was a separate lot. She said the lot was substandard according to the zoning requirements and the proposal fit within the building envelope. She said the applicant met all the other setback requirements and could not help the things they did not meet. She said she wished it were a different design but felt that it was an improvement to the lot and, without zoning relief, the applicant would not be able to improve the lot in accordance with their ownership rights.

DECISION OF THE BOARD [Timestamp 2:14:30]

*Mr. Mannle moved to **deny** the petition, seconded by Mr. Rossi.*

Mr. Mannle said he made the motion based on Criteria 10.233.21, not being contrary to the public interest. He said the public interest was clear based on how many neighbors showed up that evening. Mr. Rossi said he supported the motion because he thought that the essential character of the neighborhood is partially defined by the density of development, and placing a home on that lot would change the density of development in the immediate neighborhood and therefore change the essential character of the neighborhood and fail that criterion. Mr. Nies said it wasn't clear to him that the property dramatically changed the density of the area because the area already probably exceeds the density proposed as part of the area and he didn't think the applicant's property alone tipped the scale into exceeding it. Mr. Mattson said the lot already exists and the proposed home is entirely within the setbacks and meets the open coverage requirements, so in terms of preserving light, air and privacy, that would be satisfied. He said there were other lots in the neighborhood of that size and to say that the home would alter the essential character of the neighborhood was a higher bar. Acting Chair Margeson said that being contrary to the public interest was one of the criteria considered in conjunction with the spirit and intent and it really meant that the spirit and intention of the ordinance provision is being respected through the variance request, and whether or not it would be contrary to the spirit and intent of the ordinance, it would substantially alter the essential characteristics of the neighborhood and the public's health, safety, and welfare.

*The motion **failed** by a vote of 2-5, with Mr. Mattson, Mr. Rheaume, Ms. Record, Mr. Nies, and Acting Chair Margeson voting in opposition.*

[Timestamp 2:22:47] *Mr. Nies moved to **grant** the variances for the petition as presented and advertised, with the following **condition**:*

- *The design and orientation of the home and driveway may change as a result of the building permit review and approval.*

Mr. Mattson seconded.

Mr. Nies said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance, and would not alter the essential characteristics of the neighborhood. He said the structure would be a single family home, like the others in the neighborhood, and there were various designs that were developed over a century. He said there were some similar sized lots in the neighborhood in terms of overall square footage, and he did not believe there was any real

threat to the public's health, safety and welfare. He said all the setbacks would be met. He said granting the variances would observe the spirit of the ordinance and keep it a single family residential area. He said substantial justice would be done because without the approved variances, the property would be basically unusable for its primary use as a residence. He said the loss to the property owner would not be outweighed by any benefit to the public if the variance were denied. He said the values of surrounding properties would not be diminished, noting that there was little evidence presented that would prove that granting the variances would do so and that two realtors said that was unlikely. Regarding the hardship, he said the special condition of the lot was that it was a small lot for the zoning area, and without the variances, it could not be used to put in a single family residence. He said the proposed structure fit, and owing to the special conditions of the property, the lot could not be reasonably used in strict conformance with the ordinance. Mr. Mattson concurred and had nothing to add.

Mr. Mannle said he would not support the motion because there were very few lots in the neighborhood that had the same design. He said the applicant could use the lot in conjunction with the property before, which was how it had been used since it was purchased, and having a single family house with a decent sized backyard would be more congruent with the neighborhood instead of going up. Mr. Rheume said he would support the motion because it came down to a legal standard, which he further explained. He said the parcel was small relative to the requirements of the zoning. Mr. Rossi said the expectation would be that since the area was intentionally zoned SRB, in due course it would become more and more conforming with the requirements outlined in SRB for lot sizes and density, and he thought the Board was missing the opportunity to help move the area in the intended direction for SRB. He said there was an overarching desire to see the purpose of SRB as articulated in the PCO fulfilled, and he felt that the Board wasn't doing that.

*The motion **passed** by a vote of 5-2, with Mr. Mannle and Mr. Rossi voting in opposition.*

D. The request of 231 Corporate Drive, LLC (Owner), for property located at 231 Corporate Drive whereas relief is needed to add a fenced area between the building and the front lot line, for the use associated with dog walking which requires the following: 1) from Section 305.02(a) of the Pease Development Ordinance for an accessory use located in the front yard and: 2) from Section 304.04(c) of the Pease Development Ordinance for being located within 70 feet of the front lot line. Said property is located on Assessor Map 314 Lot 2 and lies within the Airport Business Commercial (ABC) District. (LU-24-114)

SPEAKING TO THE PETITION

[Timestamp 2:31:40] Attorney Chris Mulligan was present on behalf of the applicant, along with project engineer Neil Hansen. He said Ethos Veterinary Health wanted to install a fence dog run in front of the property that the PDA considered to be an accessory use and an accessory structure. He said they also needed relief from the 70-ft setback. He reviewed the criteria.

[Timestamp 2:36:55] Mr. Rheume asked what exact relief was needed. Attorney Mulligan said the PDA took exception that the use is an accessory use, and an accessory use between the primary building and the right of way is not permitted, so they needed the relief. He said it was essentially a dog run. Mr. Rheume concluded that the applicant needed to put the accessory use in the front yard, a fence in the front yard, and the fence would be closer to the street than allowed. He asked if the client would have the entire structure renovated to their purpose or if there were other tenants in the building. Mr. Hansen said Ethos occupied the entire structure. Mr. Rheume said the applicant noted that one of the advantages of putting it in the front yard was that it would be outside the wetland buffer, but on the GeoMap it appeared that half of the front building is within the 100-ft buffer. Mr. Hansen explained how the 100-ft wetland buffer followed the south and east walls of the building and ran to where an island was, so the entire building was outside the 100-ft buffer and the remainder of the parking lot was in the wetland buffer. He explained why he thought that the wetland shown on MapGeo was outdated.

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. Mattson moved to make a recommendation to the PDA to approve the variances as presented, seconded by Mr. Rheume.

Mr. Mattson said no adverse effect or diminution of values of surrounding properties would be suffered because it was in the commercial district and the actual proposal barely impedes on the front yard setback and is just a fenced-in area for walking dogs, so there is no reason to believe it would affect the property values. He said granting the variance would be a benefit to the public interest and would allow the building's occupant to better serve the public with this use. He said denial of the variance would result in unnecessary hardship to the person seeking it. He said the property is surrounded by a wetland buffer and the building exists as it does, so the mild encroachment on the front yard setback is required. He said substantial justice would be done because the benefit to the applicant is not outweighed by any potential harm to the general public, and the proposed use is not contrary to the spirit of the zoning rule. He said it is a veterinary clinic proposing an area to walk dogs that are in and out of the ICU, so it is not contrary to the spirit. Mr. Rheume said it was a little unusual, noting that it is an appropriate accessory need to the veterinary clinic and ideally would be situated on the side of the building, but he thought the applicant made a sufficient argument that the front is the only location outside of the wetland buffer where that activity could take place. He said the spirit of the ordinance is to try and keep fences along the property line. He said it would look a little different, but the proposed fence was a decorative one and would look like an architectural element instead of something to prevent people from

trespassing into the area. He said it is consistent with what the spirit is trying to accomplish, which is keeping obvious fenced-in areas from looking like a junk yard in the Pease Development Area.

The motion passed unanimously, 7-0.

E. The request of **132 Chapel Street, LLC (Owner)**, for property located at **132 Chapel Street** whereas relief is needed to convert an existing commercial building back to a single residential unit which requires the following: 1) Variance from Section 10.440 Use #1.10 to allow a single family dwelling where it is not permitted; 2) Variance from Section 10.5A41.10C to allow a House building type where it is not permitted; and 3) Variance from Section 10.642 to allow a residential use on the ground floor where is it not permitted. Said property is located on Assessor Map 106 Lot 6 and lies within the Character District 4 (CD4) and Historic District and the Downtown Overlay District (DOD). (LU-24-115)

SPEAKING TO THE PETITION

[Timestamp 2:45:53] The co-owner Clark McDermott was present to speak to the petition. He said the variance was needed to restore the 1800s property back to residential use. He said it had been difficult since COVID to rent office space downtown since a lot of people were working from home. He reviewed the criteria and said they would be met.

Mr. Rheame asked what the current status of the commercial tenants was. Mr. McDermott said they had four commercial tenants that included the second floor. Mr. Rheame asked if Mr. McDermott was concerned about keeping the tenants or having a hard time refilling the space. Mr. McDermott said commercial square footage value was a lot lower than residential, and the way the building was laid out presented challenges. In response to further questions from Mr. Rheame, Mr. McDermott said their one parking space was on his property and the neighboring building at 78-86 Bow Street was all residential. Mr. Nies asked when the property was last used as a residential one, and Mr. McDermott said it was converted to office space in the 1980s.

Acting Chair Margeson opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Erica Vitas said she was a realtor and represented Mr. McDermott and his father. She said she and had run comparisons on commercial and residential properties and that it was very clear that commercial properties were suffering, so she felt that the best use for the building was residential.

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

DECISION OF THE BOARD

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

[Timestamp 2:53:53] Mr. Rheume said on face value, it would seem to be potentially a concern because the CD4 District was set up to create a feel to the downtown, but he thought the applicant made a good argument that most people post-COVID were working from home, and having an office in a restricted structure that was set up as a family residence made sense back in the 1980s but now there was a trend backwards. He said the CD4 was set up to be able to affect new construction, so Portsmouth was seeing lots of new construction, especially close to the applicant's property. He said the point was to activate the streetscape but that it would create more competition for the less desirable property in the office/commercial realm and would only exacerbate it as the downtown area continued to be developed. He said the Board had seen other buildings converted back to residential use and thought it was a reasonable request. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said the neighborhood was like a micro hood and that Chapel Street had the feel of a more residential area than other areas of the Downtown Overlay District. He said it was in keeping with the overall character and was clearly an original single family home that was awkwardly converted to an office space and was no longer a saleable point anymore. He said substantial justice would be done because of the benefit to the applicant and there was no concern that the public going past the building would question why the building didn't have offices. He said granting the variances would not diminish the values of surrounding properties, noting that the conversion would not negatively impact all the new properties being developed in full compliance with the zoning. He also noted that it was sort of hidden back and not really in a walkable area. He said the hardship was that the lot was tiny and had an old structure in an area where the zoning thought of new structures as repurposing many structures that traditionally had a business front to them. He said in this case, the building looked like a single family home and completely different than anything around it in a micro hood with residential uses, and he believed it was a reasonable use of the property to be completely residential. Mr. Mannle concurred and had nothing to add.

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

*Mr. Rheume moved to suspend the 10:00 rule, seconded by Mr. Rossi. The motion **passed** unanimously 7-0.*

F. The request of Islington Properties, LLC (Owner), for property located at 371 Islington Street whereas relief is needed to convert an existing commercial space into a residential unit which requires the following: 1) Variance from Section 10.5A41.10A to allow 918 sf of lot area per dwelling unit where 3,000 sf are required. Said property is located on Assessor Map 144 Lot 22-3 and lies within the Character District 4-L2 (CD4-L2) and Historic District. (LU-24-106)

SPEAKING TO THE PETITION

[Timestamp 3:01:29] The owner Scott Rafferty was present to review the petition. He said he had a business that used to be residential but there was a condo conversion and the two downstairs units were commercial, with one having a storefront. He said the other unit would fit a studio or one bedroom residential unit. He said one of the issues was that the building access to the subject unit shared an entrance with an upstairs residential unit. He said people couldn't find the office because it looked residential. He said he moved his business to 369A Islington Street and used the other unit as a storage unit, so he thought it was better to turn it into residential. He said the parking situation was also difficult but that going residential would require only one spot. He reviewed the criteria.

[Timestamp 3:06:06] Mr. Rheume said the Staff Memo indicated that the applicant was granted a variance in 2011 equal to what was asked now. Mr. Rafferty said he had only owned the building for five years. He said the market in 2011 changed since COVID and most people worked from home. Mr. Rheume asked if there were other owners for the other three units. Mr. Rafferty said there was one owner for each of the other three units. Mr. Nies said the applicant's letter asked for a variance for parking but that he didn't see it listed. Ms. Casella said normally it would be a Conditional Use Permit but that it wasn't needed in this case because the proposed use is less intensive on the parking side, so the parking demand would go down and a change in parking for a land use was not required.

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. Rheume moved to **grant** the variance for the petition, with the following **condition**:*

- *That the application is approved for 1,147 square feet of lot area per dwelling unit out and not the 918 square feet as advertised and indicated in the Staff Memo.*

Mr. Nies seconded.

[Timestamp 3:09:04] Mr. Rheume said the applicant made a good case for converting the business to a residential use. He said the unit really looked like a residential one, whereas the one with the storefront looked a lot more commercial. He said it made more sense to make the unit residential because more people worked from home, and it was an allowed use in the zone. He said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said there was a strong mix of commercial and residential up and down Islington Street that was allowed by the zoning, and the change in use would be in keeping with that and would not change the streetscape. He said substantial justice would be done because nothing would outweigh the public interest and it would be consistent with the rest of the neighborhood. He said most people would have no idea that the unit went from being a commercial space to a residential one. He said granting the variance would not diminish the values of surrounding properties because

there would be no external changes and the building would look the same, and it would be consistent with the requirements of the zoning and other buildings in the neighborhood. Regarding hardship, he said one of the special conditions of the property was that it had limited parking, and the conversion would improve that situation. He said the building had been back and forth a few times between residential and commercial use. He said the residential use was a reasonable one because the building has unique characteristics that did not indicate that it's a commercial property. Mr. Nies concurred and had nothing to add.

The motion passed unanimously, 7-0.

G. The request of **Katherine Ann Bradford 2020 Revocable Trust (Owner)**, for property located at **170-172 Gates Street** whereas relief is needed to demolish the existing garage and the small rear addition, and construct a new garage in the same location as the existing garage and construct a side entryway roof which requires the following: 1) Variance from Section 10.521 to allow a) 45% building coverage where 30% is required, and b) 0 foot right side yard where 10 feet is required; 2) Variance from Section 10.573.20 to allow a 0 foot rear yard where 10.5 feet is required; 3) Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 103 Lot 19 and lies within the General Residence B (GRB) and Historic District. (LU-24-116)

SPEAKING TO THE PETITION

[Timestamp 3:13:37] Architect Anne Whitney was present on behalf of the applicant. She said they wanted to rebuilt the garage that was tucked int a corner. She said they were asking for zero setbacks but had a variety between .5 and .8 and would have a surveyor reset those points. She said the garage would be converted into a single family residence that would get rid of the existing ell structure. She said the garage was in poor condition and the grade sloped back, which would be remedied by the new structure. She said they would also create an entrance on the driveway side and put a small roof structure over it. She reviewed the criteria.

There were no questions. 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. Nies moved to grant the variances for the petition as presented and advertised, seconded by Mr. Rheaume.

[Timestamp 3:18:29] Mr. Nies said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said the proposed use would not conflict with the ordinance nor alter the essential character of the neighborhood, nor threaten the public's health, safety, or welfare or injure other public rights. He said it would do substantial justice because there would be no benefit to the public that would result in denying the variance and that it would be detrimental to the property owner. He said granting the variances would not diminish the values of surrounding properties and thought they might be improved because the decrepit garage would be replaced by a new structure. He said the special conditions of the property were that the lot was very small and there was no other location to put a garage. He noted that the applicant pointed out that the lot was tiny but would be more compliant with the ordinance by the change. Mr. Rheume said he would normally be concerned with zero foot lot line setbacks, even in the south end, but it was a very small property and there was an existing structure that would be rebuilt without increasing its size in any substantial way. He said the applicant was trying to improve the overall conditions of the property and noted that there were lots of other outbuildings tucked into corners throughout the general area, so the project was in keeping with the characteristics of the neighborhood. He said it would not affect light and air negatively.

The motion passed unanimously, 7-0.

H. The request of **Kenneth Racicot and Kelly Ann Racicot (Owners)**, for property located at **34 Marne Avenue** whereas relief is needed to construct a shed behind the primary structure which requires the following: 1) Variance from Section 10.573.20 to allow a 5 foot side yard where 10 feet is required. Said property is located on Assessor Map 222 Lot 33 and lies within the General Residence A (GRA) District. (LU-24-66)

SPEAKING TO THE PETITION

[Timestamp 3:22:28] The applicant Ken Racicot was present and said he wanted to build a 10'x20' shed closer to the fence at five feet away from the property line. He reviewed the criteria.

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

[Timestamp 3:26:30] Mr. Rheume said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said there were several outbuildings in the

neighborhood and that the applicant had a modest home on a modest parcel and simply wanted to have the same conveniences that some of his neighbors enjoyed, so it was consistent with the neighborhood. He said the applicant only needed under nine feet of setback, and he was asking to be four feet closer at five feet, so it would not make a substantial difference. He said it was a modest shed and not a taller structure, so it would have only a modest impact in terms of light and air. He said substantial justice would be done because the shed would be hidden in the back yard and consistent with the neighborhood. He said there was no general public purpose that would outweigh the applicant's desire to preserve the little bit of backyard he had. He said granting the variance would not diminish the values of surrounding properties because it was a good quality shed and would not have negative impacts on surrounding properties and might even improve them a bit. Relating to hardship, he said the property was unique in that it had a pork chop shape to it, which restricted the area in the backyard where an outbuilding accessory structure could be placed. He said the applicant was trying to preserve as much of the back area as possible yet still have the convenience of a shed. He said it was a reasonable use that was consistent with the neighborhood and was allowed by the ordinance. Mr. Mattson concurred and had nothing to add.

The motion passed unanimously, 7-0.

I. The request of Lindsay Floryan and Brian Collier (Owners), for property located at 493 Dennett Street whereas relief is needed to construct an 8 foot fence which requires the following:
1) Variance from Section 10.515.13 to allow an 8 foot fence where 6 feet is the maximum. Said property is located on Assessor Map 161 Lot 45 and lies within the General Residence A (GRA) District. (LU-24-78)

SPEAKING TO THE PETITION

[Timestamp 3:30:00] The applicant Lindsay Floryan Collier was present and said she wanted to replace an existing 6-ft fence with an 8-ft one. She said the old fence separating both properties blew down in a storm. She said the 403 and 481 Dennett Street owners were in support because it would increase their privacy as well as hers. She reviewed the criteria.

[Timestamp 3:32:49] Acting Chair Margeson said the packet indicated that only the yellow part of the fence would be replaced. Ms. Collier said there would be five panels of 8-ft vinyl fence in the back that would match the fence on the other side of the yard. Acting Chair Margeson asked whether the fence extended around the property. Ms. Collier said there was a retaining wall on the back side of the property, so she would replace the six panels separating the 482 and 491 Dennett Street properties. She said it would not be visible to anyone from the street.

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 petition as presented and advertised, seconded by Ms. Record.*

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 intention of the fence ordinance and height restrictions was to prevent presenting a closed-off appearance from the street view into various properties. He said since the fence ran in-between two properties and was not visible from the street, it would not conflict with the spirit of the ordinance and would not be contrary to the public interest because it would not really be visible from the street. He said granting the variance would do substantial justice because there would be no real impact or loss to the public by approving the variance, and the loss to the applicant would be the loss of the opportunity to maintain privacy and separation between her property and the adjacent one. He said it would not diminish the values of surrounding properties. He said normally he would be concerned about an 8-ft fence separating the two properties, except that the neighbor approved of it, so he did not see any diminution of property values. He said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because the property has special conditions that distinguish it from others in the area due to the slope and nature of the backyards. He said a higher than 6-ft fence was required in order to maintain the desired level of privacy and containment of the animals between yards. Ms. Record concurred and had nothing to add.

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

III. OTHER BUSINESS

There was no other business discussed.

IV. ADJOURNMENT

The meeting adjourned at 10:37 p.m.

Respectfully submitted,

Joann Breault
BOA Recording Secretary