

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

**7:00 P.M.**

**September 16, 2025**

**MEMBERS PRESENT:** Phyllis Eldridge, Chair; Beth Margeson, Vice Chair; David Rheame; Thomas Rossi; Paul Mannle; Jeffrey Mattson; Thomas Nies

**MEMBERS EXCUSED:** None.

**ALSO PRESENT:** Stefanie Casella, Planning Department

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Chair Eldridge noted that there were three Requests to Postpone, Petition D for 28 Whidden Street, Petition E for 51 Morning Street, and Petition G for 86 South School Street. In accordance with the rules of the Board, they were postponed to the October 21 meeting.

## **I. APPROVAL OF MINUTES**

A. Approval of the **August 19, 2025** meeting minutes.

*Mr. Nies moved to **approve** the minutes as amended, seconded by Mr. Rheame.*

Mr. Nies requested a change to the explanation of the amended July 15 minutes in the beginning of the August 19 minutes by deleting the word ‘currently’ in the description and noting that it was added to the sentence, and also changing the word ‘had’ to ‘add’. The revised sentence now reads: He said the argument could be made that there were not as many activities currently taking place on the property. Mr. Rheame asked that a sentence on page 13 have the phrase ‘or a future owner’ added to it so that it now reads: He said he was fearful that in the future, the applicant or a future owner would ask for a deck or something outside of the building envelope.

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

## **II. NEW BUSINESS**

A. The request of **955 US Route 1 Bypass LLC (Owner)**, for property located at **955 US Route 1 Bypass** whereas relief is needed to remove the existing freestanding sign and install a new freestanding sign which requires the following: 1) Variance from Section 10.1253.10 to allow a freestanding sign setback of 15 feet where 20 feet are required. Said

property is located on Assessor Map 142 Lot 36 and lies within the Business (B) District and Sign District 4. (LU-25-113)

### **SPEAKING TO THE PETITION**

[Timestamp 7:28] Peter March of New Hampshire Signs was present on behalf of the applicant and said the site had already been upgraded to a new gas station and there were currently two road signs which he wanted to consolidate into a single sign. He said the proposed location was the only logical place to put the new sign. He reviewed the criteria and said it would be met.

[Timestamp 11:56] Mr. Rossi said the old sign had a single post that was 3-4 feet farther away from the road and close to 20 feet from the road, and the proposed new sign has two posts, so the post closest to the road was different from what it had been. He asked how the City calculated that the setback had not changed. Ms. Casella said the setback changed by six inches, so it was measured from the edge of the sign. It was further discussed. Mr. Rossi asked why the sign would have two posts. Mr. March said it was a standard Sunoco sign and was more stable with two posts.

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** [Timestamp 14:16]

*Mr. Nies moved to **grant** the variance for the application as presented and advertised, seconded by Mr. Mattson.*

Mr. Nies said it was a minor change to an existing location and a difference of six inches in setback. He said granting the variance would not be contrary to the public interest, noting that there was no evidence that it would affect the health, safety, and welfare of the neighborhood or would affect light and air compared to what currently exists, or alter the essential characteristics of the neighborhood. He said it would remain a commercial area. It said it would be consistent with the spirit of the Sign Ordinance in that it will be a relocation in the number of structures and that there will only be one sign. He said he could not see any benefit to the public by not granting the variance and that it would clearly be a loss to the applicant because the applicant would have to use an old sign with a bad base or no sign at all, which would not work for a gas station, so granting the variance would do substantial justice. He said it would not diminish the values of surrounding properties because it was a commercial strip, and signs like the proposed one were needed by all the gas stations on the strip. He said there was no evidence presented that it would diminish the property's values, and he noted that the upgrades to the gas station which included the sign may increase the property's value. He said the property has special conditions, including the construction of the property, the location of the building and gas pumps and canopies, and the number of ingress

and egress locations on the lot limiting where the sign could be placed. He said the sign should be on the Route One Bypass instead of on Cutts Avenue because most of the traffic was on the Bypass. He said the conditions of the property show that there is no fair and substantial relationship between the purpose of the ordinance, which is to have a larger setback, and the specific application of the ordinance to the property. Mr. Mattson concurred and said the sign would be in the same spot as the existing one and would be slightly smaller in square footage, so it seemed reasonable. Mr. Rheume said he would support the motion. He said the Board recently held other sign variance requests for another gas station to a tight interpretation of the ordinance but thought it was important to note that the proposed sign was less than half of what would be allowed in Sign District 4 in terms of overall square footage, which indicated that it was a very modest request.

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

- B.** 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 construct a new garage 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; and 2) Variance from Section 10.573.20 to allow a 0 foot rear yard where 10.5 feet is required. Said property is located on Assessor Map 103 Lot 19 and lies within the General Residence B (GRB) and Historic Districts. (LU-24-116)

## **SPEAKING TO THE PETITION**

[Timestamp 18:55] The contractor Joe Terravecchia was present and said the project architect Anne Whitney was on Zoom. Ms. Casella asked Ms. Whitney if she provided an authorization for the contractor to represent the applicant, and Ms. Whitney said she did not but that Mr. Terravecchia was registered as a guest of the owner. Ms. Casella said the Board did not have an authorization form, and it was further discussed. Mr. Nies said the Board was revisiting a variance that they granted the previous year due to a minor change and that he would be comfortable suspending the rules to allow the architect to serve as the representative present with authority via Zoom.

*Mr. Nies moved to **suspend** the rules to allow project architect Anne Whitney to serve as the applicant's representative via Zoom. Mr. Rheume seconded. The motion **passed** by a vote of 6-1, with Vice-Chair Margeson voting in opposition.*

[Timestamp 23:14] Ms. Whitney said they received approval for the garage's rebuild in 2024. She said in the process of getting the building permit, there was a stipulation that a surveyor be hired to set the corner posts and record the actual size of the building. She said when she did the initial measurements for the building permit in 2024, she may have been conservative in showing it at 20'x12' because the building had a lot of disrepair. She said it was really 20.3 feet wide and 20.4 feet long. She said the additional square footage would not change the allowable building coverage that the applicant was awarded previously. She said the original approval was for 44.7 percent and now it was for 44.8 percent, so they were slightly under the approved 45 percent coverage, and they

were adding a little bit more square footage in that nonconforming zone. She said her client wanted to build the structure so that it matched the existing garage. She reviewed the criteria.

The Board had no questions. 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 [Timestamp 27:00]**

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

Mr. Rossi said the application reflected a measurement change that came about as a result of some surveying work to make the measurements a little more precise than they were when this almost identical application came before the Board recently. As such, he said the Board has already gone on record approving the rebuilding of the garage. He said granting the variances would not be contrary to the public interest, noting that the structure or the one that will be replaced already exists and there can be no real loss to the public interest by replacing an old rundown garage with one that is more sturdy and aesthetically pleasing. He said it would be consistent with the spirit of the ordinance. He said the ordinance is not designed to prohibit maintaining a safe structure on the property. He said substantial justice would be done as there really is no change to the surrounding area. He said the public would not experience any loss, so there is nothing to counterbalance the loss to the applicant if the variances were to be denied. He said granting the variances would not diminish the values of surrounding properties because rebuilding the garage and replacing a dilapidated structure with a more current one of essentially the same dimensions and design can have no conceivable impact on the surrounding properties other than to improve their value. He said the special condition of the property is the substandard or nonconforming lot size, which makes it difficult if not impossible to conceive of an alternate location for the garage that would be conforming with setbacks and lot coverage requirements. Mr. Rheume concurred. He said it was the exact reason why the Board called for rounding all the values in a Legal Notice so that they could provide for this type of error. He said he was not quite sure why the application was before the Board because it was 3/10 of a one percent change and was still within the 45 percent. Ms. Casella clarified that it was not an issue of more or less building coverage but was the fact that it was a different design. She said City Staff did not have the authority to make that decision and that the structure was before the Board because it was bigger.

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

Chair Eldridge recused herself from the following petition, and Vice-Chair Margeson was Acting Chair.

- C. The request of **445 Marcy Street, LLC (Owner)** and **Blue Sky Development Group, LLC (Applicant)**, for property located at **20 Pray Street** whereas relief is needed to construct a single-dwelling and Accessory Dwelling Unit which requires the following: 1) Variance from Section 10.1114.31 to allow a second driveway where only one is permitted; and 2) Variance from Section 10.571 to allow an accessory structure to be located closer to the street than the principal structure. Said property is located on Assessor Map 101 Lot 3-1 and lies within the General Residence B (GRB) and Historic Districts. (LU-25-89)

### **SPEAKING TO THE PETITION**

[Timestamp 32:00] Attorney Chris Mulligan was present on behalf of the applicant, with project architect Tracy Kozak and project engineer Eric Weinrieb. Attorney Mulligan said the property was created by a subdivision in 2022 and that the current proposal was to develop the vacant lot with a single-family residence and a detached garage with an ADU. He said the plans were approved by the Historic District Commission (HDC) in July. He said what they proposed was compliant with the ordinance except for the secondary front yard setback requirement because the property had frontage on three lots and they were proposing an ADU that would be closer to Partridge Street than the primary structure. He said they also needed relief from the prohibition against more than one driveway because of the frontage on Partridge Street, which his client thought he should take advantage of. He said the new single-family dwelling would have the detached garage next to it, which would extend farther back from the primary dwelling and place it closer to Partridge Street. He said they would need additional approvals from the New Hampshire Department of Environmental Services (NHDES) because they were within the 250-ft State wetlands setback. He said Mr. Weinrieb was confident that the storm management and drainage plans would work and would be approved by the Department of Public Works (DPW). He reviewed the criteria.

[Timestamp 42:57] Mr. Rheume asked why the main structure was oriented toward Pray Street and along it instead of Partridge Street. Ms. Kozak said it was consistent with the neighborhood to have the houses up to the street, and the grade was higher on Pray Street and more out of the flood zone. Acting Chair Margeson clarified that the zoning relief was for the second driveway that services the ADU on the Partridge Street side and the other variance was for having that in front of the principal dwelling for the Partridge Street side.

Acting Chair Margeson opened the public hearing.

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

No one spoke.

### **SPEAKING IN OPPOSITION TO THE PETITION** [Timestamp 45:00]

Tyler Markley of 475 Marcy Street said he opposed the variance request to grant a second driveway. He said the ordinance stated that driveways shall be limited to one lot. He said the hardship claimed that there were multiple frontages, which he said was not a unique attribute in the

neighborhood because five of the surrounding abutters all had multiple frontages. He said the applicant said there were other options that did not require him to get a variance to comply and that the hardship offered the opportunity to site the parking space, and that they wanted to take advantage of that site frontage. He said that was not a hardship. He said the lot was unique and hydrologically challenging. He said the Board had to ensure that all the criteria were met tonight because future promises of the NHDSE being involved did not count.

Michele McLaughlin of 469 Marcy Street said she opposed the variance for the second driveway. She agreed with all of Mr. Markley's points and said there was no hardship. She said the developer had the option to put a driveway on the primary lot line instead of on Partridge Street and that the project would increase flooding to neighboring properties and decrease property values.

### **SPEAKING TO, FOR, OR AGAINST THE PETITION [Timestamp 52:06]**

Mr. Weinrieb said they prepared the stormwater management plans with the original owner and worked closely with the DPW on the design and was confident that the new design would have their full support. He said they would have permeable surfaces for the driveway and the subsurface detention and improve the drainage on the property to convey it out of the area and into the culvert. He said they would prepare engineering calculations on meeting the City's site plan review standards and would have DPW review it and that the drainage issue would be improved.

Marcia MacCormack of 53 Salter Street asked if an ADU could just be built instead of converting an existing building into an ADU. Ms. Casella said the laws had changed in the last six months and encouraged Ms. MacCormack to contact her to discuss it further.

Attorney Mulligan said the changes in the State law did not affect the City's ordinance prohibiting ADUs to be in condo associations separate from the ownership of the primary dwelling. He said they had to be in current ownership and that they would be. He said that was a requirement that the City had that was not affected by the change in law. He said it would not be a condo association. He said he understood Mr. Markley's argument about how the applicant was asking to take advantage of the unique feature of the property, but he said the way hardship is defined is not impossibility. He said there were other solutions and that the applicant's solution was the better one.

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

### **DISCUSSION AND DECISION OF THE BOARD [Timestamp 57:20]**

Mr. Rossi said the Board would see more requests for additional driveways due to the changes in law about the allowance for ADUs. He said if he were looking at the lot and where things were proposed to be placed, it made sense to have the ADU on one side or the other to be closer to the primary frontage or secondary frontage road. He said what troubled him was the current condition of flooding and water management and that it was not clear to him that, once all the work was done to mitigate the flooding and come up with a satisfactory plan for the DPW, the proposal would

actually be the one that would end up being built. He said the Board had cases in the past where they approved variances but the person did not follow through due to State regulations. He said he was not satisfied that proceeding with the project would not have an adverse impact on surrounding property values or that it would meet the substantial justice criteria, so without the benefit of seeing exactly how it would be mitigated, he could not support the proposal. Mr. Rheume said a lot of it was driven by the fact that the property has two front yards, and if Partridge Street did not exist in terms of the positioning of the second structure, an accessory structure would be allowed. He said the property owner would want to mitigate the flooding issue so that the property could be used. He said there were technical solutions that could resolve the flooding issue and that he had great faith in the DPW and other permitting agencies. He said the hardship for the property was not really a hardship but was how the property is different than other properties in the same zone that justify doing something that the ordinance normally does not allow. He said the applicant has the right to develop the property in the way they want. He said the variance requests were well within the allowable criteria. He noted that the applicant had the approval of the HDC and that the request for a second driveway was logical and driven by the unique characteristics of the property. He said he had concerns about putting pavement right up against the neighboring property line but that the applicant would provide a more respectful setback on the Pray Street side. Mr. Mannle said the Board was aware of his distaste for the City's zoning when it came to corner lots but thought there was no hardship for the second driveway and that it was just the applicant's preference. He said he was undecided on the variances if they were voted on together. Acting Chair Margeson said her concerns were more about the stormwater and the water drainage issues. She said if the Board denied the variances based on stormwater issues, there may be no reasonable opportunity for the property to be used by the owner as it was intended to. She said having a doublewide driveway on Pray Street might ruin the streetscape. Mr. Nies suggested a condition that the ADU would be contingent on approval of a stormwater management plan by the relevant authorities. It was decided to separate the two variances.

[Timestamp 1:09:20] *Mr. Rheume moved to **grant** Variance Section 10.571 to allow an accessory structure to be closer to the street than the principal structure. Mr. Mattson seconded.*

Mr. Rheume said the through lot was influencing the applicant's request. He said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. Regarding the character of the neighborhood, he said the HDC weighed in. He said the applicant already indicated that they would have to push the house toward Pray Street, so an accessory structure would probably extend beyond the massing of the house. He said the appropriate massing is a relatively modest size house put against the Pray Street side, so any accessory building would probably extend into the second front yard. He said substantial justice would be done because he did not believe there was anything that would outweigh the public's benefit by having the accessory structure placed in the proposed location. He said it was driven by the fact that the lot was a through lot with two front yards and by the nature of the way the topography and layout was set up. He said granting the variance would not diminish the values of surrounding properties. Related to the specific request, he said the accessory structure would look normal and add a feeling of occupation near the Partridge Street side. He said the unique conditions of the property were that it is a through

lot, has topography concerns, and is in the Historic District. He said the proposed design was trying to comply with the HDC's desire to keep the look and feel of the neighborhood. He said the use was a reasonable one and that all the structures were allowed in the zone. Mr. Mattson concurred. He said the crux of the whole application was the through lot. He said the lot was also bigger than the average lot and it was vacant, and those factors made the property quite unique in the area. He said it was clear that the definition of the Driveway Ordinance portion did not consider through lots and that it also applied to the indications for where the ADU would be placed. He said it was a hardship to have the through lot and get the Conditional User Permit for an ADU. He said anyone who pulled a building permit to build a house could not make the drainage and stormwater runoff worse and that the DPW and NHDES would be looking at it. He said the Board heard about the technical ways to improve the drainage, like a permeable driveway and the subsurface retention area. He said he understood the neighbors' concerns about the stormwater management plan not taking effect yet, but if the Board denied the variance now, the owner would not have a chance to do anything.

*The motion **passed** by a vote of 5-1, with Mr. Rossi voting in opposition.*

[Timestamp 1:16:32] Acting Chair Margeson asked for a motion to grant the variance from Section 10.1114.31 to allow a second driveway where only one is permitted.

*Mr. Mattson moved to **grant** the variance with the following **condition**:*

- 1. The applicant will submit a stormwater management plan for DPW approval to construct a second driveway on Partridge Street.*

*Mr. Rheaume seconded the motion.*

Mr. Mattson said he appreciated the concerns because there were flooding issues on the property as a vacant lot that had not been engineered at all. He 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 purposes of the ordinance and that ADUs were allowed by a Conditional Use Permit. He said the portion of the ordinance regarding the driveway does not consider through lots because the concept of having two driveways on the same frontage is a different scenario than having driveways on two opposite frontages that one cannot see from the other side. He said the single-family home with an ADU would not alter the essential character of the neighborhood or threaten the public's health, safety, or welfare or otherwise injure public rights. He said having a building permit and passing inspections required someone to deal with the stormwater management, and that there was also extra engineering and oversight happening at the State level and the DPW. He said multiple points of review would not be met if the application could not proceed. He said granting the variance would do substantial justice because the benefit to the applicant would not be outweighed by any harm to the general public or other individuals. He said the property was vacant and the applicant made a good effort to build a single-family home with an ADU. He said he understood the public's concerns regarding the stormwater runoff and drainage but said they would be improved. He said the values of surrounding properties would not be diminished because the design had been through many revisions and boards and was approved

by the HDC. He said it was a tastefully done design, and the new construction would not diminish the values of surrounding properties. He said literal enforcement of the ordinance would result in unnecessary hardship due to the special conditions of the property, namely the fact that it is a through lot, bigger than average, and vacant, which is rare in the South End. He said the way the ordinance was written for driveways do not seem to properly account for through lots, so there is no fair and substantial relationship between the purpose of the ordinance and its specific application to the property. He said the use was a reasonable one.

Mr. Rheaume concurred. He said the included condition put the application into the review of the experts who develop and approve the plan. He said the Board looked at things from a map standpoint and how the property compared to the other properties in the zone, and that allowing something that is the applicant's choice with the caveat that experts will be brought in would be a good thing. He said the neighbors had a legitimate concern about the floodwater issue but that it would be mitigated, and if it could not, then the driveway would not be allowed.

[Timestamp 1:24:28] Mr. Mannle explained why he thought the application failed on the first two criteria and said he could not support it.

*The motion **passed** by a vote of 4-2, with Mr. Mannle and Mr. Rossi voting in opposition and Chair Eldridge recused.*

**D. REQUEST TO POSTPONE** - The request of **Charlie Neal and Joe McCarthy (Owners)**, for property located at **28 Whidden Street** whereas relief is needed to construct an addition to the rear of the structure which requires the following: 1) Variance from Section 10.521 to allow 42% building coverage where 30% 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 102 Lot 64 and lies within the General Residence B (GRB) and Historic Districts. **REQUEST TO POSTPONE (LU-25-127)**

## **DECISION OF THE BOARD**

The petition was **postponed** to the October 21 meeting.

**E. REQUEST TO POSTPONE** - The request of **Carrie and Gabriel Edwards (Owners)**, for property located at **51 Morning Street** whereas relief is needed to demolish the existing garage and construct a new attached garage with office space which requires the following: 1) Variance from Section 10.521 to allow a) 51% building coverage where 25% is allowed, b) 4 foot left side yard where 10 feet are required, c ) 3.5 foot rear yard where 20 feet are required; 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 163 Lot 16 and lies within the General Residence A (GRA) District. **REQUEST TO POSTPONE** (LU-25-125)

## **DECISION OF THE BOARD**

The petition was **postponed** to the October 21 meeting.

Chair Eldridge returned to her seat and Acting-Chair Margeson returned to Vice-Chair status.

- F. The request of **Reichl Family Revocable Trust (Owner)**, for property located at **15 Marjorie Street** whereas relief is needed to construct additions to multiple sides of the existing dwelling which requires the following: 1) Variance from Section 10.521 to allow a) 2 foot front yard where 30 feet are required, b) 12.5 foot rear yard where 30 feet are required, c) 28.5% building coverage where 20% is allowed; and 2) Variance from Section 10.321 to allow a nonconforming building or structure to be extended, recon-structed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 232 Lot 41 and lies within the Single Residence B (SRB) District. (LU-25-115)

## **SPEAKING TO THE PETITION**

[Timestamp 1:27:54] Contractor Timothy Hron of the Hron Brothers was present on behalf of the applicant. He said the single-family unit was in the far northwest corner and was nonconforming regarding the front, right, and rear setbacks as well as the lot area and lot area per dwelling. He said they wanted to build a 2-story 20'x32' addition, an 18'x18 sunroom, and a 18'x18' covered porch. He said they would have to demolish the existing covered porch on the east side and remove the existing deck. He said the owners owned the abutting Lot 232-39 that was .41 acres and were in the process of doing a voluntary merge, which would make their lot size three times the average of a typical lot on Marjorie Street. He reviewed the criteria and noted that they had conditional approval from the Conservation Commission because the lot had an inland wetland.

[Timestamp 1:33:30] Mr. Rheume asked what the new footprint would be. Mr. Hron said they wanted to remove the existing porch from the front. He indicated on the map where they wanted to add the covered porch, sunroom, and 2-story addition. Mr. Rheume verified that the sunroom and porch were one-story additions. He asked if the patio would be raised above 18 inches or would be at ground level. Mr. Hron said it was proposed to be about six inches above the current grade but the property sloped down toward the inland wetland buffer. He further described it. Mr. Rheume asked if the lot to be merged was the one directly to the south of the property, and Mr. Hron agreed.

Chair Eldridge opened the public hearing.

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

No one spoke. Vice-Chair Margeson asked if the other lot was on the front or the side. Mr. Hron showed where the lot was and how it ran down parallel to the paper street. Vice-Chair Margeson asked where the wetland delineation began and how many feet it was down from the property line. Mr. Hron said there was about 44 feet of setback from the wetland to the closest proposed structure.

Chair Eldridge closed the public hearing.

## **DECISION OF THE BOARD**

[Timestamp 1:38:18] Mr. Nies asked Ms. Casella to explain how the City considered a paper street. Ms. Casella said a paper street was considered a public right-of-way where a road has not been built yet and that the City had the right to build that street at any time or require the applicant to build it.

*Mr. Rheaume moved to **grant** the variances for the application as presented and advertised, seconded by Mr. Mattson.*

Mr. Rheaume further explained the paper street. He said he thought the applicant was asking for a fair amount of relief, but there were unique conditions to the property because it was a small lot surrounded by lots of woods that, due to the wetlands, a paper street never got built and the second property might not get developed in the future. He said once the two properties were merged, it would be a 8-1/2 percent total coverage, and even without the merger the property would not be developable enough to be sold off. He said the applicant met the coverage requirements. Regarding the setbacks, he said most of what the applicant was proposing for the most significant development was toward the paper street and there was a considerable distance between his property and the next one, which worked in the applicant's favor. He said the more modest additions were proposed to be toward the south side of the property and up against one of the single largest properties in Portsmouth, so the things that the Board were normally concerned about were not significant because of the property's location. He 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 change the neighborhood because the parcel was uniquely situated and not really visible. He said substantial justice would be done because no one would be driving down the paper street. He said the values of surrounding properties would not be diminished because the property was situated quite a ways from the other properties, and there were multiple unique situations about the property that said it should not be treated the way other SRB properties are treated. He said the applicant was justified in having a fairly substantial addition, especially toward the paper street side. He said the request was a reasonable one, to continue to make use of the allowed residential structure that is there but provides more room in a more modern setting and provide more creature comforts.

[Timestamp 1:44:25] Mr. Mattson said it was the classic reason why a variance is needed. He said he was surprised at first how much relief was being asked for, but then he saw how unique the parcel was in terms of the long driveway, its location in the woods and near an enormous parcel and the wetland buffer, and so on. He said the requested variances made sense.

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

**G. REQUEST TO POSTPONE** The request of **Brian T and Kyle M LaChance (Owners)**, for property located at **86 South School Street** whereas relief is needed to demolish the existing porch, construct an addition with a deck and replace an existing flat roof with a slanted roof on the existing dwelling which requires the following: 1) Variance from Section 10.521 to allow a) 7.5 side yard where 10 feet is required, b) 15 foot rear yard where 25 feet is required, c) 31% building coverage where 30% is the maximum 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 101 Lot 63 and lies within the General Residence B (GRB) and Historic Districts. **REQUEST TO POSTPONE** (LU-25-122)

### **DECISION OF THE BOARD**

The petition was **postponed** to the October 21 meeting.

**H.** The request of **Ama and Alexander LoVecchio (Owners)**, for property located at **87 Grant Avenue** whereas relief is needed to demolish the existing home and construct a new dwelling in the same footprint which requires the following: 1) Variance from Section 10.521 to allow an 8 foot right side yard where 10 feet are required. Said property is located on Assessor Map 251 Lot 7 and lies within the Single Residence B (SRB) District. (LU-25-123)

### **SPEAKING TO THE PETITION** [Timestamp 1:46:44]

The applicant was not present.

### **DECISION OF THE BOARD**

*Mr. Rossi moved to **postpone** consideration of the application until the November 18 meeting, seconded by Mr. Mannle.*

Mr. Rheume said he would support the motion but found it frustrating because several people were present to speak to the petition and had waited a considerable amount of time but would not have the opportunity to provide their input.

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

A few citizens in the audience explained why they were frustrated (no names were given). It was further discussed.

*Mr. Rheume moved that the application will be readvertised and notice will be sent out at the applicant's expense. Mr. Nies seconded. The motion **passed** unanimously, 7-0.*

- I. The request of **CABN Properties, LLC (Owner)**, for property located at **409 Lafayette Road** whereas relief is needed to subdivide the existing lot into two lots which requires the following: 1) Variance from Section 10.521 to allow 0 feet of frontage for the rear lot where 100 feet is required. Said property is located on Assessor Map 230 Lot 22 and lies within the Single Residence B (SRB) District. (LU-25-126)

## **SPEAKING TO THE PETITION**

[Timestamp 1:54:00] Attorney Derek Durbin was present on behalf of the owner. He said the current deed to the property described two separate parcels with a total land area of 30,473 sf. He said Parcel 1 was about 13,500 sf and had 100 feet of frontage on Lafayette Road, whereas Parcel 2 was 16,973 sf and did not benefit from any public street access. He said both parcels along with the adjacent properties of 413 and 417 Lafayette Road benefited from a 50-ft wide access right-of-way and that there was a paved driveway in that right-of-way about 20-25 feet in width that made it like a pocket neighborhood. He said his client wanted to re-subdivide the property to create two new house lots that would more closely conform to the ordinance. He reviewed the criteria.

[Timestamp 2:00:52] Mr. Nies asked where the right-of-way was and how far into the lot it went. Attorney Durbin showed the location on the map and said it went into the abutting lot at 413 Lafayette Road and appeared to extend about 20 feet or so into that lot. Mr. Nies asked how far it went to the southeast. Attorney Durbin showed that it went slightly beyond where the lot line was drawn for Lot 22-2. Mr. Nies said the shown area indicated that it was a proposed access easement in favor of Lot 22-1, the lot that abuts Lafayette Road. Attorney Durbin said the two lots would share a driveway entrance and that the driveway would cross Lot 22-2 to access Lot 22-1. Mr. Nies said the 1981 subdivision plan indicated that the lot line between the two lots was to be removed. He asked if that happened. Attorney Durbin said he researched it and could not figure out why things were done the way they were but knew that the longtime owner of Parcel 1 never joined into the subdivision plan where the lot line was to be eliminated between her lot and the rear lot. He said there were two deeded parcels and that the City assessed it as one, so he considered it under both scenarios for purposes of presenting the materials to the Board. Vice-Chair Margeson asked if the hatched area on the diagram would be the driveway for both properties and whether the resident on Lot 22-2 would have their driveway on Lot 22-1. Attorney Durbin explained that there was a jog in the line separating the two lots.

[Timestamp 2:06:09] Project engineer Eric Weinrieb was present and explained that the jog was necessary to show that the driveway could stay as it is so that the house in front could utilize it and the house in back would come off the driveway and go across their own land. Mr. Rheume verified that the intent was that there would be another driveway that extends from the portion that has the easement on it into the buildable area of Lot 22-2 to allow a garage or a driveway that would be accessible to the back lot. He asked if there was sufficient room to make that happen, and Mr. Weinrieb agreed. Vice-Chair Margeson asked how the right-of-way for the shared driveway portion

would be treated legally if the variance was approved. Mr. Weinrieb said they would have a homeowner's association for shared use and shared expenses for the two lots. Attorney Durbin noted that an easement would be conveyed at the time the rear parcel Lot 22-2 was conveyed and would define the maintenance responsibilities of the shared portion of the driveway.

Chair Eldridge opened the public hearing.

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

[Timestamp 2:09:53] Dave Baxter said he was the founder and current member of 413 Lafayette Road, owned by the Friends of Lafayette House. He said they were in support of the petition but wanted a condition (stipulation). He said the lot was created in 1983 for the 6,000 sf building and that it had twelve residents with intellectual disabilities. He said the proposed house would not present any issues to them, especially since the applicant agreed to install a fence along the southern border of Lot 22-2. He said in 1983, there were not ADUs, Airbnbs, and so on. He said the residents at the Lafayette House were not like normal single-family home residents and had certain challenges and requirements. He said a short-term rental next to them would endanger their safety. He said a condition was requested that if there is to be an ADU, there would be no short-term rentals allowed. Ms. Casella said someone could advertise regular short-term rental properties such as Airbnbs, B&Bs, hotels and motels without their being the same thing as a regular unit that someone owns for the regular purpose of an Airbnb. It was discussed further.

Chair Eldridge opened the public hearing.

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

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

### **DECISION OF THE BOARD**

[Timestamp 2:14:30] Mr. Rossi said he thought it was premature for the Board to consider conditions that involved exactly how the lot would be developed and improved until they had a specific proposal in front of them that would constitute building out the lot. Mr. Rheaume said that the City allowed a Bed & Breakfast One use, which was 1-5 guests, and a Bed & Breakfast Two use was not currently allowed in the SRB zone but if it were potentially allowed, someone could say that they owned a B&B and advertise it on short-term rental sites. He said all kinds of legislation went before the State every year and that the State contemplated allowing short-term rentals in all residential zones. He said if the State were to make a decision, the City's hands would be tied. He said right now it was not an allowed use by the ordinance in that particular zone. Mr. Rossi said the Board could only react to what they had in front of them, which was simply a plan to divide the property into two lots, and he thought it was a lot that lent itself to division into two lots based on its size and right-of-way access, so he was in favor of the application.

*Mr. Rossi moved to **grant** the variance for the application as presented and advertised, seconded by Vice-Chair Margeson.*

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 purpose of the lot frontage requirement is all about access to the lot and not overcrowding a road with lots that are too closely spaced together, and the intended driveways allowed ingress and egress. He said since both lots are accessed by an established right-of-way that really doesn't come into play, the lot is not really landlocked. He said there was adequate access to a lot with that right-of-way. He said substantial justice would be done because the lot is a large one and oversized for the zone, and it would be a substantial loss to the owner not to be able to enjoy the benefit of dividing it and the consequent increase in the property's value. He said that was not outweighed by a loss to the general public. He said granting the variance would not diminish the values of surrounding properties, noting that the other uses adjacent to the lot would be insensitive to the property as two lots vs. one lot. He said literal enforcement of the ordinance would result in unnecessary hardship, noting that the property's hardship that required the variance is that the lot is separated from Lafayette Road by a large similar property and it is a very deep lot and impossible for it to have frontage due to the nature of the property itself.

Vice-Chair Margeson concurred. She said in terms of the spirit and intent of the ordinance, there were frontage requirements so that the streetscape is orderly and uniform and makes for more pleasantly aesthetic neighborhoods. She said in this case, the lot is a tandem one and behind another lot, therefore the spirit and intent of the ordinance was not really applicable to this lot. She said the public would not really lose anything because it is a lot that is behind another lot. In terms of the hardship criteria, she said the property has special conditions that distinguish it from other properties in the area, and owing to those special conditions, a fair and substantial relationship does not exist between the general public purposes of the ordinance's provision and the specific application of that provision, and the proposed use is a reasonable one. She said the property did have special conditions because it was not on a street frontage, so it did not make much sense for the purposes of the public ordinance to have 100 feet of street frontage applied to the property. She said the proposed use is a reasonable one, a single-residence home in the SRB District.

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

### **III. ADJOURNMENT**

The meeting adjourned at 9:23 p.m.

Submitted,

Joann Breault  
BOA Minutes Taker