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June 13, 2025

VIA ELECTRONIC AND HAND DELIVERY SUBMISSION

Phyllis Eldridge, Chair
Portsmouth Zoning Board of Adjustment ("ZBA")
1 Junkins Ave.
Portsmouth, NH 03801

RE: Request to Withdraw Variance Application
Mezansky Family Revocable Trust (Owner)
636 Lincoln Ave., Portsmouth NH 03801
Tax Map 148, Lot 17, GRA District, LU-25-27

Dear Chair Eldridge and Zoning Board members:

Please accept this letter in support of a request to withdraw the above-referenced variance application, or for alternative relief as set forth herein, initially considered by the ZBA at its 5/27/25 meeting. The undersigned was in attendance at that meeting, but did not at that time represent the owner/applicant, Mezansky Family Revocable Trust ("Mezansky"). The undersigned has also reviewed the entire video of the presentation, discussion and deliberations.

For ease of reference, the Mezansky application, presented by Amy Dutton, requested removal of an existing old garage in close proximity to the rear and left property lines, in favor of a new one-story addition, moved forward and attached to the home. Relief was required for: expansion of a nonconforming building; 2 foot left side setback where 10 feet is required; 12.5 foot rear setback where 20 feet is required, and 39% building coverage where 25% is the maximum allowed. (**See attached 5/27/25 Agenda**). The building coverage was approximately 3% (+/-96 sf) over existing conditions based upon lot size estimated without benefit of a formal survey. Rear setback was a significant improvement over the existing garage setback of 1-2 feet (5/27/25 ZBA Video at 0:15:55); left side setback at +/- 2 feet was approximately the same as the existing garage (Video at 0:13:47), again without benefit of formal survey.

DANIEL C. HOEFLE	ALEC L. MCEACHERN	PETER V. DOYLE	STEPHEN H. ROBERTS In Memoriam
R. TIMOTHY PHOENIX	KEVIN M. BAUM	MONICA F. KIESER	OF COUNSEL:
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R. PETER TAYLOR	GREGORY D. ROBBINS	KAREN W. OLIVER	JOHN AHLGREN

The project went forward after Mezansky approved five (5) voting members due to a refusal. Prior to the hearing, several abutters, including the neighbor immediately to the left of Mezansky, submitted a letter of support. One objection was filed by the rear neighbor, where the rear setback was significantly improved. After presentation by Ms. Dutton on behalf of Mezansky, neither any abutter, nor any member of the public, offered testimony in opposition to the project.

The primary topic of discussion by the board during and after presentation was the fact that no formal survey was submitted in support of the application. This raised concerns among board members as to the accuracy of the coverage and setback relief required, as those numbers were based upon information gleaned by Ms. Dutton from her investigation but without benefit of a formal survey. Specific Board member comments include:

- Ms. Margeson – Concern over light and air (Video at 0:20:59 and 0:22:00)
Concern that survey was not completed (Video at 0:22:25)
Moved to postpone to the June meeting pending survey, with ability to further continue pending survey (Video at 0:30:45)
- Mr. Rossi- Concern about further increase in lot coverage over 25% limit and character of the neighborhood (Video at 0:12:05)
Lot is small, do not know the boundaries. (Video at 0:28:24)
Concern about approval under circumstances even with survey (Video at 0:28:24 and 0:33:15)
- Mr. Rheaume- Survey questions (Video at 0:13:47)
Not sure whether survey would affect decision but one has to be done at some point in any event (Video at 0:26:33)
Leaning toward support because 1 story (Video at 0:26:33), and only a few coverage percent over existing conditions (Id)
- Mr. Mattson- If approved, could a survey be obtained after the fact confirming numbers and it improper, return to ZBA? (Video at 0:26:20)
Not opposed to postponement for survey (Video at 0:31:00)
- Chair Eldridge- Generally in favor noting improvement over existing garage location, denial could be problematic under Fisher v. Dover, continue for survey (Video at 29:55)

In summary, in order to permit a survey, the Board unanimously continued the matter to the June, 2025 meeting, with further continuance permitted if survey was not yet completed. Mezansky has ordered a survey but it is not yet ready and will likely not be ready by the date of the July, 2025 meeting. While a formal vote was not taken, it appears to the undersigned that some board members were generally in favor of the project, while others were not, but all considered it reasonable to continue the project in order to obtain a survey which would provide specific accuracy to the dimensional relief requested. The questions, comments and action of the board continuing the application demonstrate that essentially, the application as filed was incomplete.

This request is required by the Portsmouth Zoning Board of Adjustment's Rules and Regulations, Rule VII (2) which provides in pertinent part that once an application has opened for presentation, the board shall reach a decision. The applicants were advised by planning staff that the option exists to request that the ZBA suspend the rules to allow withdrawal of the application.¹

The questions and concerns of the zoning Board primarily revolved around the fact that dimensional relief (side and rear setbacks and building coverage) was based upon estimates because a survey had not been completed-in essence, the application was incomplete and could not reasonably be considered until a survey was provided. We respectfully submit that the better course for the board to have taken was to require the survey prior to formal presentation of the application.

Additionally, Mezansky has thoughtfully considered the questions and comments of the board members. Mezansky has determined that they do not presently need the addition, so desire to withdraw the requests for the relief, instead considering primarily internal changes to their home which would at this time avoid the need for removal of the existing garage in favor of the addition. Notwithstanding this decision, Mezansky seeks to preserve all rights in the future.

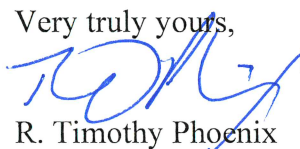
¹ Mezansky respectfully reserves their rights with respect to the constitutionality/legality of a rule which does not permit, under the circumstances of this application, withdrawal before a decision is made.

Considering the application and the discussions at the 5/27/25 hearing, the incomplete application followed by this request for withdrawal of the application means that there is nothing for the ZBA to consider. Under all the circumstances, it is fair and reasonable presently to permit withdrawal of the application without Mezansky or their successors in interest being limited or prohibited in the future due to the application of Fisher v. Dover. Allowing withdrawal or other non-precedential determination will relieve the Board of further time, the applicant of further time and expense, and the possibility of additional time and expense occasioned by an appeal if denied on the merits.

Based upon the foregoing, Mezansky respectfully requests that the ZBA:

1. Grant Mezansky's request for withdrawal of the pending application without prejudice; or in the alternative.
2. Deny Mezansky's variance request as incomplete, without prejudice; or in the alternative.
3. Continue the application to the August, 2025 Zoning Board meeting in order to complete a survey at which time more precise dimensional relief needed can be determined, followed by approval of the zoning request.

The undersigned will appear at the 6/17/25 ZBA meeting prepared to address the zoning board with respect to the issues set forth herein.

Very truly yours,

R. Timothy Phoenix

cc: (via email)
Clients
Amy Dutton

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

*Members of the public also have the option to join the meeting over Zoom
(See below for more details)**

7:00 P.M.

May 27, 2025

AGENDA

I. OLD BUSINESS

- A. The request of **Mezansky Family Revocable Trust (Owners)**, for property located at **636 Lincoln Avenue** whereas relief is needed to demolish an existing detached garage and to construct an addition to the primary structure which requires the following: 1) Variance from Section 10.521 to a) allow a 2 foot left side yard setback where 10 feet is required; b) allow a 12.5 foot rear yard setback where 20 feet is required; c) allow 39% building coverage where 25% 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 148 Lot 17 and lies within the General Residence A (GRA) District. (LU-25-27)

II. NEW BUSINESS

- ~~A. The request of **Jeannette MacDonald (Owner)**, for property located at **86 Farm Lane** whereas relief is needed to subdivide the existing property into 3 separate lots. The proposed parent lot requires the following: 1) Variance from Section 10.521 to allow a) 28-foot rear yard setback where 30 feet is required; and b) 23-foot secondary front yard where 30 feet is required. Proposed lot 1 requires the following: 2) Variance from Section 10.521 to allow a) 10,664 s.f. of lot area where 15,000 s.f. is required; b) 10,664 s.f. of lot area per dwelling unit where 15,000 s.f. is required; and c) 75 feet of continuous street frontage where 100 feet is required. Proposed lot 2 requires the following: 3) Variance from Section 10.521 to allow a) 11,250 s.f. of lot area where 15,000 s.f. is required; b) 11,250 s.f. of lot area per dwelling unit where 15,000 s.f. is required; and c) 75 feet of continuous street frontage where 100 feet is required. Said property is located on Assessor Map 236 Lot 74 and lies within the Single Residence B (SRB) District. (LU-25-67)~~