

# HOEFLE, PHOENIX, GORMLEY & ROBERTS, PLLC

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January 31, 2023

## HAND DELIVERED & VIA EMAIL

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

Re: Jeffrey and Melissa Foy  
67 Ridges Ct.  
Tax Map 207 Lot 59  
LU-22-199  
SR B/Wetland Conservation District

Dear Ms. Eldridge and Zoning Board Members:

On behalf of Jeff and Melissa Foy (“Foy”) please accept this letter as a request for reconsideration of the January 17, 2022 vote by the ZBA denying 4-3 our Request For Rehearing of the earlier denial of a revised zoning application, considered by the ZBA and denied on November 15, 2022.

### I. EXHIBITS

1. 8/16/22 ZBA Meeting Minutes.
2. 11/15/22 ZBA Meeting Minutes.
3. 01/17/23 ZBA Action Sheet.<sup>1</sup>

### II. HISTORY/REQUEST FOR RECONSIDERATION

Briefly, the history of this matter is that Foy, through the undersigned, appeared before the ZBA on August 16, 2022 seeking relief for an addition consisting of two garage bays with

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<sup>1</sup> Minutes are not yet online.

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|---------------------|----------------------|--------------------|----------------------|
| DANIEL C. HOEFLE    | R. PETER TAYLOR      | GREGORY D. ROBBINS | STEPHANIE J. JOHNSON |
| R. TIMOTHY PHOENIX  | ALEC L. MCEACHERN    | PETER V. DOYLE     | OF COUNSEL:          |
| LAWRENCE B. GORMLEY | KEVIN M. BAUM        | MONICA F. KIESER   | SAMUEL R. REID       |
| STEPHEN H. ROBERTS  | JACOB J.B. MARVELLEY | DUNCAN A. EDGAR    | JOHN AHLGREN         |

living space above, requiring relief primarily from the front setback requirement. Proposed was 15.5 feet due to the location of the existing home, which does not meet the front setback requirement, where the required setback was then understood to be 30 feet, Member MacDonald recused himself. **(Exhibit 1)** The application was denied 5-0 *id.* Rather than seeking a rehearing or appealing that decision, Foy redesigned the project, proposing a much smaller addition, eliminating one of the garage bays and reflecting reduced relief due to the discovery that based upon the average setbacks of nearby homes, the setback required was 19 feet rather than 30 feet. *Id.*

On November 15, 2022, the ZBA considered the reduced-scope project. Member MacDonald again recused himself. **(Exhibit 2)** The ZBA first considered Fisher v. Dover. Member Rossi moved that the petition does not fall under Fisher v. Dover and that it be heard. The motion failed, with 2 votes in favor (Rossi, Mattson) and 3 votes against (Mannle, Lee, Eldridge).

Foy submitted a request for rehearing on December 14, 2022, considered by the ZBA on January 17, 2023. After considering the December 14, 2022 request for rehearing, which upon information and belief faced no opposition/objection from abutters or neighbors, Member Mannle moved to deny the rehearing. **(Exhibit 3)** After discussion, the motion passed, with four members (Mannle, MacDonald, Margeson, Eldridge) supporting the motion to deny, and three members (Rheaume, Rossi, Mattson) voting against the motion to deny after having expressed reasons that the request for rehearing should be granted.

The question we respectfully submit is the propriety of member MacDonald voting on the Request for Rehearing. Member MacDonald, on information and belief, lives at 24 Ball Street. He had recused himself from consideration/voting on both the original ZBA application for the larger, two garage bay addition, and the smaller one garage bay addition.

We respectfully submit that if member MacDonald recused himself from voting on the merits of the two variance applications, then, unless there was a change of circumstances rendering the recusal moot, in which case the change should have been explained, member MacDonald should have recused himself from voting on the request for rehearing. Thus, member

MacDonald's vote should not be counted. Pursuant to Portsmouth Board of Adjustment Rules and Regulations Section VI.5:

Granting a request for rehearing of a Variance or Special Exception requires a majority vote of members present and voting or in the case of a tie vote three (3) affirmative votes shall be required. (emphasis added)

In the instant case, elimination of member MacDonald's vote to deny rehearing results in a 3-3 tie, in which case rehearing is deemed granted. We respectfully request that the ZBA so find.

Respectfully submitted,



R. Timothy Phoenix

RTP/msw  
Encl.

cc: Client

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

7:00 P.M.

August 16, 2022

**MEMBERS PRESENT:** Arthur Parrott, Chair; Jim Lee, Vice Chair; Beth Margeson; Paul Mannle; Phyllis Eldridge; David MacDonald

**MEMBERS EXCUSED:** Thomas Rossi

**ALSO PRESENT:** Peter Stith, Planning Department

Chairman Parrott called the meeting to order at 7:00 p.m.

**~~I. APPROVAL OF MINUTES~~**

~~A) Approval of the minutes of the meeting of July 19, 2022.~~

~~The following amendments to the minutes were requested by Ms. Margeson:~~

~~On page 2, first paragraph: "Ms. Margeson said the abutter Pike Industries submitted an option for rehearing that was very comprehensive." The word 'option' was changed to 'motion'. On page 4, first paragraph after Discussion of the Board: "She said the fact that the building was in the District was an extra purpose when the board entertained a variance." The word District was changed to Historic District, and the phrase 'when the board entertained a variance' was changed to 'that the board needed to consider when it entertained a variance.'~~

~~Mr. MacDonald moved to **approve** the minutes as amended, and Vice-Chair Lee seconded. The motion **passed** by unanimous vote, 5-0.~~

**II. OLD BUSINESS**

- ~~**A. POSTPONED TO SEPTEMBER** The request of **Joel St. Jean and Mariele Chambers (Owners)**, for property located at **108 Burkitt Street** whereas relief is needed to demolish existing garage and construct new 13' x 30' garage which requires the following: 1) A Variance from Section 10.573.20 to allow a 1 foot left side yard where 10 feet is required. 2) A Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 159 Lot 30 and~~

~~lies within the General Residence A (GRA) District. (LU-22-89) **POSTPONED TO SEPTEMBER**~~

### **DECISION OF THE BOARD**

Mr. Mannle moved to **postpone** the petition to the September meeting, seconded by Vice-Chair Lee. The motion **passed** by unanimous vote, 5-0.

~~Mr. Mannle said postponement of a petition was a common request and he had no problem postponing it to the September meeting. Vice-Chair Lee concurred.~~

Mr. MacDonald recused himself from the following petition. The applicant said he would proceed even though there were only five voting board members.

- B.** The request of **Jeffrey M. and Melissa Foy (Owners)**, for property located at **67 Ridges Court** whereas relief is needed to construct a 718 square foot garage addition with living space and deck above which requires the following: 1) A Variance from Section 10.521 to allow a 15.5' front yard where 30' is required. 2) A 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 207 Lot 59 and is located within the single residence B (SRB) District. (LU-22-139)

### **SPEAKING TO THE PETITION**

Attorney Tim Phoenix was present on behalf of the applicant and introduced his team, project engineer John Chagnon, realtor Robin Valeri, owners Melissa and Jeff Foss, and property appraiser Peter Stanhope (via Zoom). He reviewed the proposal and the criteria in detail. In response to Ms. Margeson's questions, Attorney Phoenix said 100 percent of the project was within the tidal buffer zone and a very small corner of the house was also in the buffer zone.

Realtor Robin Valeri noted that one of the opposing neighbors said their property would lose over a million dollars in value but said she did an amortization calculation that disproved it. She said just because neighbors could see a property owner's water view didn't mean they had a right to that property view. She said the applicant paid \$26,000 in yearly taxes whereas the neighbor paid \$11,000. She said there was no market evidence to suggest that a partial loss of water view would result in a huge diminution of value. She noted that the neighbors could walk to the beach.

Ms. Margeson asked if the dock was part of the beach. Mr. Chagnon agreed, noting that it was a public beach. Vice-Chair Lee said there was a similar situation involving a view a few years ago, and he had contacted an appraisal expert who opined that the value of a view was between 5-30 percent of the property's value. Ms. Valeri said it would just be a partial loss of view. Ms. Margeson said the subject lot had a water view and was taxed for it, and she asked about Lots 62 and 63 across the street. Ms. Valeri said their property taxes were about \$11,000 but didn't know

if those taxes included a water view, and that neither lot could be marketed with water view easements although they could be taxed with water views.

Peter Stanhope (via Zoom) said he was a certified general appraiser in New Hampshire. He explained that the views extended all the way to the end of Ridge Court, so the project would only result in a partial loss of view. He said he interviewed several realtors, appraisers, and municipal assessors about whether an unowned, uneased view contributed value to a property and was told that it was between 1-30 percent. He explained the definition of market value and reviewed different types of views that included partial, panoramic, and territorial views. He said the issue was a territorial view and the project would remove a very modest part of that greater view. He concluded that there would be no diminution of value in surrounding properties if the variances were granted since there would be no loss of view. He said he found no evidence that the neighbor's 2.3 million-dollar property would have a probability of a million dollar loss and assumed that the realtor wasn't aware that there was a view preserved.

Property owner Jeff Foy said he researched assessed land values in the neighborhood as to whether the current tax assessment was reflective of the view. He said the neighbor Cathy Thomson's assessment for her land was the lowest assessment on a square-footage basis for land for any property on Ridges Court. He said there were much smaller lots on the street and there wasn't a current view assessment going on. Ms. Margeson asked if there was an actual verification of a water view tax assessment on those two properties, and Mr. Foy said he didn't see one. Mr. Mannle asked if Mr. Foy went online or spoke to the city's tax assessor. Mr. Foy said he looked at the figures online and that they were not reflective of anything substantial.

Mr. Parrott opened the public hearing.

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

No one spoke.

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

Attorney Darcy Peyser said she was present on behalf of Kathleen Thomson of 56 Ridges Court, who objected to the project because it failed most of the criteria, especially the hardship one. She said the structure would have a huge detrimental effect on Ms. Thomson's property and that it could be moved back so that it complied with the 30 percent buffer setback. Vice-Chair Lee asked if there would be a different view if one walked ten feet down the street. Attorney Peyser agreed there would be more of the view of Little Harbor.

Robin Hackett of 46 Ridges Court said she lived across the street from the applicant. She read the letter she submitted to the board saying how the addition would negatively impact the neighbors' enjoyment of their properties and water views. She said there wasn't a hardship for adding another porch and living space on top of the garage. She said the property couldn't support that and also maintain environmentally protected setbacks. She said the addition would increase neighboring properties for sale purposes and property taxes would rise.

Mark Hepp of 28 Ridges Court said the variance request would place a 30' high, 3-story building right in the middle of the setback and would not only affect the water view but also the birds and nature. He said the applicant could find another creative way to build an addition without encroaching on the setback. He distributed a drawing that was submitted by the applicant that he marked up to show how it would look if the setbacks were complied with.

Kathleen Thomson of 56 Ridges Court said the project would adversely affect her property value and water views as well as those of nearby property owners. She said it would cause a hardship and significant changes to the neighborhood's quality of life.

Marta Rubinek of 40 Ridges Court said the project would detract from the most-affected neighbors' beautiful views and quality of life and hoped their little corner would be protected.

Nancy Andrews of 161 Sagamore Avenue said that, as a member of the general public, she was harmed when a south end property in a quaint community was having huge pieces of buildings added very close to the street so that the street would soon look like the downtown hotel area.

Warren Wilson of 40 Ridges Court said the addition would be out of scale for the area.

Mike Rainboth said he lived at the end of Ridges Court and had enjoyed the views from Mr. Thomson's deck many nights. He said the addition would block that view.

Dylan Hackett of 46 Ridges Court said the view was a nice one to have.

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

Owner Jeff Foy stated that a few inaccurate things were said by some of the opposition. He said the addition would return the structure to a garage and would not block 100 percent of anyone's view. He said he actually scaled down his original larger plan to fit entirely on the existing asphalt area. He said the 30' setback was on his lawn and not on the side of the road, and he had worked with that as much as he could. He said the addition would be back from the current house and further from the street than any of the homes that were supposedly impacted.

Attorney Phoenix said the marked-up plan handed in by Mr. Hepp was originally prepared by Ambit engineer John Chagnon and that it was improper for Mr. Hepp to mark up the plan and use it without Ambit's permission, so he asked that it not be taken into evidence. He said the front yard setback purposes did not intend to protect someone's views past their properties but intended to protect air and light. He said some of the existing views would be limited by the project but there would still be views. He said Mr. Stanhope said there would be no diminution of property values and that the concerns about environmental impacts were not within the board's purview. He said the applicant met all the requirements for the variance request and there was no demonstration that there would be any loss of value for surrounding neighbors.

Evan Mullen of 82 Austin Street said he was a building designer and the code of ethics for architects indicated that they had an obligation to the public and environment. He asked that the applicant come up with better alternatives.

No one else spoke, and Chairman Parrott closed the public hearing.

### **DISCUSSION OF THE BOARD**

Ms. Eldridge said she could not support the variance request because she didn't see a hardship. She said the addition could be built anywhere on the property. Mr. Mannle said the addition was proposed to be fully in the wetlands buffer and if the setback were complied with, it wouldn't need a variance. He said if the Conservation Commission granted approval for a difference of another 10 or 15 feet, he didn't see how it would make a difference because the project was fully in the wetlands buffer. Vice-Chair Lee said back in the 1960s when he was stationed in the Air Force in Florida, one could drive along the miles of dunes and the views of the Gulf of Mexico were the territorial views, but now there were 10-story condos which were the new territorial view. Ms. Margeson said the board did not have any jurisdiction over the views and were tasked with the applicant's request for a front yard setback. She said she shared everyone's concern about building within the wetland buffer and that it was clearly delineated in the ordinance under the environmental protection standards, but the board could not take that into consideration. She said if the tidal buffer zone were pushing the project closer to the main building, she'd have a different view of it, but anything built on the property had to be built within the tidal buffer zone, so she couldn't say it was really a hardship.

### **DECISION OF THE BOARD**

Ms. Eldridge moved to **deny** the request for variances, seconded by Mr. Mannle.

Ms. Eldridge said the hardship just wasn't there. She said the applicant stated that they needed to avoid the buffer zone but were not avoiding it, and they were within the setback where they could be anywhere else within the buffer zone. Mr. Mannle concurred. He said the property was problematic as far as the wetland buffer and the applicant knew the hardship going in yet was asking the board to grant something that was fully in the buffer when it could be moved back and eliminate all the emotional responses from the neighbors.

Chairman Parrott said he wrestled with the hardship aspect, especially the conditions of the property that distinguished it from others in the area, because there were other properties in the area that were similarly situated. He said the structure was already in the setback so it wasn't a unique feature, and there were opportunities to deal with the neighbors' concerns.

The motion **passed** by unanimous vote, 5-0.

### **III. — NEW BUSINESS**

- A. REQUEST TO POSTPONE** The request of **Jeffrey C. Christensen (Attorney for the Appellants)**, for property located at **225 Banfield Road** for a rehearing of the May 24, ~~2022~~ decision of the Zoning Board of Adjustment's granting of a request for variances to

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

7:00 P.M.

November 15, 2022

**MEMBERS PRESENT:** Jim Lee, Vice Chair (via Zoom); David MacDonald; Paul Mannle; Phyllis Eldridge; Thomas Rossi; Jeffrey Mattson, Alternate

**MEMBERS EXCUSED:** Beth Margeson

**ALSO PRESENT:** Peter Stith, Planning Department

Vice-Chair Lee was present via Zoom. Ms. Eldridge was Acting-Chair.

**I. APPROVAL OF MINUTES**

Approval of the minutes of the meetings of October 18, 2022 and October 25, 2022.

The October 18 minutes were **approved** as presented by unanimous vote, 6-0.

For the October 25 minutes, Mr. Rossi asked that the word 'provision' after the phrase 'does not provide' be deleted from the following motion on page 12 to read as follows:

Mr. Rossi **moved** that the board finds an error in the enforcement of the zoning ordinance in the July 15 decision of the Planning Board for the following reasons: the north end overlay incentive district does not extend into the 100-ft setback and therefore does not provide for the increased building lot coverage, size, square footage, and height.

The minutes were **approved** as amended by unanimous vote, 6-0.

Acting-Chair Eldridge asked the Board to elect a new Chair and Vice-Chair.

*Mr. Rossi moved to add the election of officers to the agenda, seconded by Mr. Mannle. The motion passed unanimously, 6-0.*

*Mr. Rossi moved to elect Vice-Chair Lee as Chairman and Ms. Margeson as Vice-Chair, seconded by Mr. Mannle. The motion passed unanimously, 6-0.*

**II. OLD BUSINESS**

- A. The request of **Jeffrey M. and Melissa Foy (Owners)**, for property located at **67 Ridges Court** whereas relief is needed for construction of a 518 square foot garage addition which requires the following: 1) A Variance from Section 10.521 to allow a 15.5 foot front yard where 19 feet is required per Section 10.516.10. 2) A 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 207 Lot 59 and lies within the Single Residence B (SRB) District. (LU-22-199)

Mr. MacDonald recused himself from the petition, which left five voting members. The applicant's representative said they would proceed.

### **SPEAKING TO THE PETITION**

Attorney Tim Phoenix was present on behalf of the applicant, including the project team and applicants. He stated that they were previously denied by the Board and were now proposing a smaller project due to the concerns of the neighbors. He reviewed the Fisher v. Dover doctrine and explained why they met the requirements by removing one of the previously-proposed garages in addition to other changes.

Mr. Rossi asked if the front yard setback was always 15.5 feet. He noted that the thing that changed was the reference point of 19 ft vs. 30 ft, so he felt that had not really changed. Attorney Phoenix said the location of the front of the building has not changed, but the degree of the ask was different because they only needed 19 feet. He said the problem with 19 feet is that the back of the building would be pushed more into the wetland buffer, and the new building has to line up architecturally.

Mr. Rossi asked Mr. Stith if Fisher v. Dover required that the substantive change be impactful on the variance itself or if a major change in the project without changing the variance could be considered. Mr. Stith said the variance could be the same but it was the material change that mattered, and he didn't think the setback had to change for it to be different. It was further discussed. Mr. Mannle said all the reasons the application was denied before were still in place so it had not materially changed, and even though it was a small building, the setbacks had changed a bit. Chairman Lee agreed and said it was basically the same horse pulling a different buggy, so he did not think the application would be able to be heard. Mr. Rossi disagreed and said he felt it did pass the standard for Fisher v. Dover. He said the neighborhood's main concern previously had to do with the sight line to the waterfront and the impaired views, and the new proposal made a diligent and good-faith effort to address that concern, so he therefore believed it was a substantive difference in a material way that affects it fitting into the neighborhood. Mr. Mattson said he also wasn't at the previous meeting, but he felt that the broad definition of a garage is 'a garage is a garage', so that wouldn't be different, but applying it that broadly, he thought that no matter what addition was proposed, the Board would say that it was the same, so a two-car garage vs a one-car garage is a difference, even if it's still a garage.

**DECISION OF THE BOARD**

Mr. Rossi said the petition passed the Fisher v. Dover criteria of substantive change that would allow the Board to hear the new proposal.

*Mr. Rossi moved that the Board determine that the petition does not fall under Fisher v. Dover and that it be heard. Mr. Mattson seconded. The motion **failed** by a vote of 2-3, with Mr. Mannle, Chairman Lee, and Acting-Chair Eldridge voting in opposition.*

**III. NEW BUSINESS**

Mr. MacDonald resumed his voting seat.

- ~~A. The request of **Emily-Anne Boon (Applicant)** and **Jeanne L. Wescott Revocable Trust (Owner)**, for property located at **118 Maplewood Avenue, Unit C4** whereas relief is needed to allow a medical office which requires the following: 1) A Special Exception from Section 10.440, Use #6.20 to allow a medical office where the use is permitted by Special Exception. Said property is located on Assessor Map 124 Lot 5-C4 and lies within the Character District 4-L1 (CD4-L) and the Historic District. (LU-22-205)~~

**SPEAKING TO THE PETITION**

The applicant Doctor Emily-Anne Boon stated that she wanted to expand her medical office and would see patients only by appointment for medically aesthetic procedures. Her husband Drew Boon was also present. He reviewed the criteria for special exception and said they would be met.

Mr. Rossi asked if emergency vehicles would go in and out of the facility, and Doctor Boon said they would not. There were no further questions from the Board. Acting-Chair Eldridge opened the public hearing.

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

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

**DECISION OF THE BOARD**

*Mr. Mannle moved to **grant** the special exception for the petition as presented, seconded by Mr. Rossi.*

Mr. Mannle said the petition met the standards in Section 10.232.21 of the ordinance for that particular use of a special exception. He referred to Section 10.232.22 and said there would be no hazard to the public or adjacent properties on account of potential fire, explosion, or release of toxic materials. Referring to Section 10.232.23, he said the project would pose no detriment to property values in the vicinity or change in the essential character of any area including residential or

**BOARD OF ADJUSTMENT MEETING  
EILEEN DONDERO FOLEY COUNCIL CHAMBERS  
PORTSMOUTH, NEW HAMPSHIRE**

7:00 P.M.

January 17, 2023

**ACTION SHEET**

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

**MEMBERS EXCUSED:**

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

**PLEASE NOTE: DUE TO THE LARGE VOLUME OF AGENDA ITEMS SCHEDULED FOR JANUARY 17, 2023, THE BOARD WILL BE VOTING TO POSTPONE CONSIDERATION OF NEW BUSINESS ITEMS E. THROUGH I. TO THE JANUARY 24, 2023 BOARD OF ADJUSTMENT MEETING.**

*The Board voted to split the agenda and hear New Business items E through I on Tuesday, January 24, 2023.*

*Motion: P. Mannle, D. Macdonald. Passed all in favor.*

**I. APPROVAL OF MINUTES**

A. Approval of the December 20, 2022 minutes.

*The Board voted to **approve** the December Minutes as amended.*

**II. OLD BUSINESS**

A. **Cherie Holmes** and **Yvonne Goldsberry - 45 Richmond Street** request a 1-year extension to the variances granted on January 19, 2021. (LU-20-249)

*The Board voted to **grant** the 1-Year extension as requested.*

*Motion: T. Rossi, J. Mattson. Passed by unanimous vote.*

**B. 67 Ridges Court - Request for Rehearing (LU-22-199)**

*The Board voted to **deny** the request for a Rehearing because the material changes would not have altered the Board's original decision, or their second decision as all the objections that the Board found in the application were still in play and the Board did not error in making its decision.*

*Motion: P. Mannle, B Margeson. Passed by a vote of 4-3, with Mr. Rheaume, Mr. Rossi, and Mr. Mattson voting in opposition.*

~~**C. REQUEST TO POSTPONE** The request of **635 Sagamore Development LLC (Owner)**, for property located at **635 Sagamore Avenue** whereas relief is needed to remove existing structures and construct 4 single family dwellings which requires the following: 1) A Variance from Section 10.513 to allow four free-standing dwellings where one is permitted. 2) A Variance from Section 10.521 to allow a lot area per dwelling unit of 21,198 square feet per dwelling where 43,560 square feet is required. Said property is located on Assessor Map 222 Lot 19 and lies within the Single Residence A (SRA) District. (LU-22-209) **REQUEST TO POSTPONE**~~

*The Board voted to take Old Business item C. out of order.*

*Motion: D. Rheaume, B. Margeson. Passed all in favor.*

*The Board voted to grant the request to **postpone** consideration to the **March 21, 2023** Board of Adjustment meeting.*

*Motion: P. Mannle, D. Macdonald. Passed 5-0 in favor, D. Rheaume and T. Rossi recused from the vote.*

**D.** The request of **Nissley LLC (Owner)**, for property located at **915 Sagamore Avenue** whereas relief is needed to demolish the existing building and construct new mixed-use building which requires the following: 1) A Variance from Section 10.440 to allow a mixed-use building where residential and office uses are not permitted. 2) A Variance from Section 10.1113.20 to allow parking to be located in the front yard and in front of the principal building. 3) A Variance from Section 10.1114.31 to allow 2 driveways on a lot where only one is allowed. Said property is located on Assessor Map 223 Lot 31 and lies within the Waterfront Business (WB) District. (LU-22-229)

*The Board voted to **postpone** to the **February 22, 2023** meeting.*

*Motion: D. Rheaume, J. Mattson. Passed by a vote of 4-2, Mr. Mannle and Vice-Chair Margeson voted in opposition, T. Rossi recused from the vote.*

**III. NEW BUSINESS**

**A.** The request of **Sarah M Gardent Revocable Trust (Owner)**, for property located at **47 Howard Street** whereas relief is needed for the installation of a mechanical heat pump which