

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

7:00 P.M.

May 24, 2022

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

MEMBERS EXCUSED: Thomas Rossi

ALSO PRESENT: Peter Stith, Planning Department

Chairman Parrott called the meeting to order.

*It was moved, seconded, and passed unanimously (6-0) to take Item H, 108 Burkitt Street, out of order and **postpone** it to a future meeting per the applicant's request.*

I. OLD BUSINESS

- A.** The request of **Pamela J. Katz Revocable Trust (Owner)**, for property located at **462 Lincoln Ave, Unit 4** whereas relief is needed to install a generator which requires the following: 1) A Variance from Section 10.515.14 to allow a 6 foot setback where 10 feet is required and to allow the generator to be closer to the street than the principal structure. Said property is located on Assessor Map 133 Lot 20-4 and lies within the General Residence A (GRA) District. (LU-22-77)

SPEAKING TO THE PETITION

The applicant's son Chris Adams was present. He said his mother was on oxygen 24 hours a day and that the generator would alleviate her fears of being without power. He said the generator would be hidden within the fence. He reviewed the criteria and said they would be met. In response to Vice-Chair Lee's question, Mr. Adams said the unit had 65-68 decibels.

Chairman Parrott opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

*Vice-Chair Lee moved to **grant** the variance for the petition as presented and advertised, seconded by Mr. Mannle.*

Vice-Chair Lee said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said the use of the generator would not be in conflict with implicit or explicit purposes of the ordinance and would not alter the essential characteristics of the neighborhood or threaten the public's health, safety, or welfare. He said substantial justice would be done because the benefit to the applicant would not be outweighed by any harm to the general public. He said granting the variance would not diminish the values of surrounding properties because the generator wouldn't be detected by them. He said the hardship was the resident's medical condition, so there was no fair and substantial relationship between the general public purpose of the ordinance and its application to the petition. He said the generator would be operated at 65 decibels, so there would be no problems with noise. For those reasons, he said the variance should be granted. Mr. Mannle concurred and said it was a generator for use in case of emergency. He said he was familiar with the townhouses and noted that the wrought-iron fence enclosed the yard and was permitted by the condo association.

*The motion **passed** by unanimous vote, 6-0.*

I. NEW BUSINESS

- A.** The request of **Joseph Ricci (Applicant)**, for property located at **225 Banfield Road** whereas relief is needed to demolish existing building and construct new 5 unit commercial building and 60 unit residential building with underground parking which requires the following: 1) A Variance from Section 10.521 to allow a 45 foot front yard where 70 feet is required. 2) A Variance from Section 10.440 to allow a 60 unit residential building where residential uses are not permitted in the Industrial district. Said property is located on Assessor Map 254 Lot 1 and Map 266 Lot 1 and lies within the Industrial (I) District. (LU-22-91)

SPEAKING TO THE PETITION

Attorney Chris Mulligan was present on behalf of the applicant. The applicant Joseph Ricci and consulting engineer Gregg Mikolaities were also present. Attorney Mulligan said they proposed to merge two contiguous lots on Banfield Road, one of which already had a nonconforming commercial building on it, the Ricci Construction headquarters. He said the other lot was vacant. He said they wanted to place a 60-unit residential apartment building in the rear of the lot and that the existing industrial and commercial usages of the property would remain intact. He said the property was unique because it was ten acres, had frontage in two discontinuous spots on Banfield Road, had wetlands in the western rear of the property, and had a fair amount of ledge, all of which pushed the developable area toward the east Banfield Road. He noted that the surrounding uses in the area were a mix of residential and commercial and what the applicant proposed was a bit of both. He said the project would provide the opportunity to fill the housing need in the community and would also be monitored and maintained by the owner Mr. Ricci. He

said the city previously concluded that solutions were needed for placing diverse housing in unconventional spaces and densities, which was what the applicant proposed to do. He said there would be studios and one-bedroom units of modest size and emphasized that they were not micro units, affordable housing or workforce units but would be more affordable than most of the existing housing in the city. He said the property abutted the rear of the community campus, which would be an amenity to the new residents. He noted that the project would go through full site review and that he had letters of support from two of the abutters. He reviewed the criteria, noting that the proposed industrial use was allowed by right and would be less nonconforming than the existing building and the apartment building would be tucked behind the commercial one to limit its visibility from Banfield Road. He said the hardship was the location of the property, its large size, two noncontiguous frontages, wetlands, and ledge that were all unique characteristics that differentiated the property from others in the neighborhood.

Ms. Eldridge asked why it was necessary to seek the variance for the distance from the road. Attorney Mulligan said the wetlands and ledge forced the developable area to the front, but they also wanted to maintain a suitable separation between the commercial and residential use. He said the goal was to create some degree of safe and healthy separation. Mr. Ricci explained how the project would limit their wetlands impact.

Ms. Margeson asked why the new Ricci Headquarters would be industrial and not office space. Attorney Mulligan said it wouldn't be only the Ricci Headquarters but would be five units that would have warehouse and other industrial uses. Ms. Margeson said it seemed that there was just office space on the property. Mr. Ricci said 25 percent would be office space. Ms. Margeson asked what would be manufactured. Mr. Ricci said they would fabricate panels for clean rooms and plumbing and electrical contractors might use the space. He said it would be more commercial industrial with just a small portion of office. Ms. Margeson asked if that was the type of work that had been previously done on the property, and Mr. Ricci said they had been doing that and similar work for 87 years.

Ms. Margeson said there was a lot of wetlands on the property and environmental contamination was found at the community campus. She asked if that was part of the applicant's property. Mr. Ricci said they hadn't done any environmental assessment but he had owned the property for 70 years, so he knew what was on it. Ms. Margeson said it was a significant use variance from industrial to residential and was located right near Pike Industrials, a heavy industrial company. She said there were many ways to rezone the property and asked why the applicant wouldn't try for a zoning amendment that could go through Planning Board review. Attorney Mulligan said it would take considerable more time and that they couldn't just spot zone the parcel; they'd have to cobble together an argument that some substantial amount of the industrial zone should allow for that type of housing use. He said they had more control of the process if they requested variances because they came piece-by-piece and could be judged case-by-case; otherwise, they would have to figure out where in the industrial zone it made sense to site residential uses.

Ms. Margeson said she was concerned that there were industrial uses going on, like Pike Industrials, and it was hard for her as a Board member to know whether or not industrial uses still had a need in Portsmouth. She said it was a broader question for the City Council or the

Planning Board. Attorney Mulligan said they weren't abandoning industrial uses on the property but it was a two-piece puzzle and a significant piece was the commercial building. Ms. Margeson asked why the residential part of the property couldn't be used for industrial. Attorney Mulligan said they didn't have the need for that much industrial development on the property, but if they wanted to, they could put a significant amount of industrial and commercial use on the property that would cause a substantial amount of heavy equipment and traffic and more of an impact on the wetlands. He said they didn't think that was desirable and that they would rather create some diversity in the city's housing stock. Mr. Ricci said the residential piece was about an acre less of impervious, and if they developed it by right, it would be 60 or 70,000 square feet of commercial and industrial with a lot more pavement. He said the residential component filled a need and that having the community campus behind it would have the abutter's support. He said the project also brought the sewer down the road, which eliminated the septic system for the lot and also allowed the housing units across the street to go on sewer, which was another positive impact.

Mr. Mannle said he assumed the setback was because the current building would get demolished and the new one would be more compliant by ten feet. He said the zoning map showed that one side was all industrial, yet there were three residences and a school, so he assumed that all those places got variances. Mr. Stith said the school did but that he couldn't speak to the residences. Mr. Mannle asked if the applicant would consider stipulating that six units would be RSA workforce housing. Attorney Mulligan said sixty units were required to make the project work and that it wouldn't make sense to do it at a lower number. He said if they dedicated a portion of the units as workforce housing, they would have to increase the number of units to 70 to fit them in because in order to qualify for workforce housing the units had to be priced at 60 or 80 percent of the median rentals. Mr. Ricci said he could do a total of 70 units, with six units being studios and three being one-bedrooms that were 80 percent to offset the delta. Mr. Mannle said he'd like to see six out of 70 units at whatever the RSA stated and the remaining units would be priced as originally planned. Mr. Ricci said 60 units were necessary for the rents he wanted to charge and that he'd have to go from 66 units to 70. It was further discussed. Vice-Chair Lee said he saw only four units on the site plan and not five. Attorney Mulligan said it should be four. Vice-Chair Lee asked if there was a conflict with the residential component sharing a common driveway with the commercial. Attorney Mulligan said it would require a site review.

Chairman Parrott opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

No one spoke.

SPEAKING IN OPPOSITION TO THE PETITION

Larry Majors of Pike Industries submitted written comments to the Board. As a direct abutter, he said Pike Industries had to oppose the project. He said the proposal to insert residential housing into an industrial zone violated the intent and spirit of zoning in the community. He said the purpose of zoning was to create areas where similar land uses could co-exist without interruption from inconsistent and potentially adverse neighbors. He said the proposal would be contrary to

the public interest of keeping industrial activities separate from residential housing and that it would violate setback requirements and place residences very close to the property line shared by Pike Industries and Ricci. He said substantial justice would not be done because it would be unjust to place residences in an industrial zone like it would be unjust of Pike Industries to place their asphalt plant in a residential area. He said Pike's property value would be diminished because it was important to have a very large buffer around it. He said there was no hardship except for the placement of the residential facility on Mr. Ricci's property because Mr. Ricci had been at his location for 70 years. He said the proposal was in direct conflict with the intentions of community zoning and should be denied. Mr. Mannle asked if Mr. Majors spoke in opposition when St. Patrick's put in their campus. Mr. Majors said he had not received a public notice and wasn't aware but that they weren't a direct abutter to St. Patrick's like they were to Ricci's.

George Haskell of Leslie Drive said he had lived in Portsmouth all his life and had seen too many changes. He said the only variances granted should be for something like a generator and that the ordinance should be upheld if the requested variances involved big businesses.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DISCUSSION OF THE BOARD

Ms. Margeson said she would not support the application because it was a significant change in use and she couldn't think of two more incompatible uses in the city than residential and industrial, largely for the reasons that Mr. Majors stated. She said Attorney Mulligan admitted that the property could be used in the way that it was zoned, industrial, so therefore there was no hardship. She said she was concerned that there would still be industrial uses on the property with a very significant residential apartment building in the back. She said if there were opportunities for rezoning some of the industrial lands, it should be dealt with by the City Council and the Planning Board to see if those lands were suitable for that kind of use. Given that the project was in a heavy industrial zone, the environmental issues with the community campus, and the industrial use by Pike Industries, she said a more deliberative process should be given to the application through a zoning amendment. She said it would go through the Planning Board and TAC but it would be for the purpose of siting the facility, not looking to see whether the land was suitable for that use.

Mr. Mannle said he understood what the applicant was trying to do but after looking at it and taking in Mr. Majors' comments, he said the residential use was at the very back of the property because it was closer to the community campus. He said he didn't know if the project would be better received if it was flipped and wasn't sure if it would change Pike Industries' objections, but Banfield Road was becoming more residential. He thought the petition had some issues given the way it was conceived right now. He suggested a different design, where the residential uses were closer to Banfield Road and the industrial use was closer to Pike Industries.

Ms. Eldridge said she didn't see a problem in putting residential on Banfield Road because there was a school and houses up and down the street, but she had trouble seeing a hardship since the property could be used for industrial purposes. She said she didn't know how she could approve it under the Board's guidelines. Vice-Chair Lee said he was also conflicted for the same reasons but could go either way. Chairman Parrott said the street was evolving in terms of its usage and that it had gone for many decades with little or no change, but now there was a school, housing developments, and two residences. He said it was a very mixed-use district and if someone wanted to develop the property and build an apartment building, they would do so at the risk that it would be a success. He said he supported that approach, even though it wasn't an ideal location but it would encourage or require lower-than-average rents. He said it wasn't an ideal proposal but that he could support it because it would be a better use. Mr. MacDonald said there would be industrial uses at other places on Banfield Road that would increase traffic. He said people would want to make use of the wetlands and would find out that they couldn't. He said the whole project had consequences that hadn't appeared yet, and the Planning Board and the TAC would have to reach an agreement about what was the best way to make that area usable to the most people in the city. He said the applicant's approach was one way of making productive use of the land and that it wasn't the Board's job to decide if it would be acceptable, so he wanted to bounce it back to the Planning Board and TAC.

Attorney Mulligan asked the Board to address the variances separately instead of as a package.

DECISION OF THE BOARD

*Vice-Chair Lee moved to **grant** Variance #1 to allow a 45-ft front yard where 70 feet was required, seconded by Ms. Eldridge.*

Vice-Chair Lee said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance because the use would not conflict with the implicit and explicit purposes of the ordinance. He said there were other residential houses in the immediate neighborhood, so he didn't think granting the variance would alter the essential character of the neighborhood or threaten the public's health, safety, or welfare. He said substantial justice would be done because the benefit to the applicant would not be outweighed by any gain to the general public or anyone else, and the values of surrounding properties would not be diminished. He said literal enforcement of the ordinance would result in an unnecessary hardship because the hardship was the topography of the land and the geology of the wetlands, and the buffer was necessary to limit the pervious materials used and make it more environmentally friendly. He said the variance should be granted for those reasons. Ms. Eldridge concurred and said the setback would be 45 feet, so it would be more conforming.

*The motion **passed** by unanimous vote, 6-0.*

*Vice-Chair Lee moved to **grant** Variance #2 for the 60-unit residential building, seconded by Ms. Eldridge for discussion.*

Vice-Chair Lee said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said the property was technically zoned industrial but was clearly in a transitional zone because it had residences directly abutting it as well as a large school next to it and a new residential development across the street. He said the industrial area was becoming a transitional one to absorb a mixed use. He said substantial justice would be done because the benefit to the applicant would not be outweighed by any gain to the public, and the gain to the public would be modestly priced housing stock that the city desperately needed. He said that would tie into the values of surrounding properties not being diminished because the apartments would be an asset and would buttress the fact that the area seemed to be a transitional area going to mixed use. He said the special conditions of the property would result in an unnecessary hardship and that the use would be reasonable because residences would be put up at the rear portion of the property that would be away from the commercial use on Banfield Road but would directly abut the residential property to the left of it. He said he saw no fair and substantial relationship between the purpose of the ordinance and its application to the property because the proposed use was a reasonable one. For those reasons, he said the variance should be granted as presented and advertised. Ms. Eldridge concurred and had nothing to add.

Mr. Stith asked if the Board would entertain the stipulation in the Staff Report that the building design including size, scale, location, and site layout may change subject to review by the Conservation Commission and the Planning Board. Vice-Chair Lee and Ms. Eldridge concurred.

The **amended** motion was as follows:

*Vice-Chair Lee moved to **grant** Variance #2 for the 60-unit residential building, seconded by Ms. Eldridge, with the following stipulation:*

- 1. That the building design including size, scale, location and site layout may change subject to review by the Conservation Commission and the Planning Board.*

*The motion **passed** by a vote of 4-2, with Ms. Margeson and Mr. Mannle voting in opposition.*

- B.** The request of **Thomas Hammer (Applicant)**, for property located at **219 Sagamore Avenue** whereas relief is needed to demolish the existing garage and deck and construct new garage and entryway which requires the following: 1) A Variance from Section 10.521 to allow 30.5% building coverage where 25% is the maximum allowed. 2) A Variance from Section 10.573.20 to allow a 2.5 foot rear yard where 15 feet is required. 3) A Variance from Section 10.571 to allow an accessory structure to be located closer to a street than the principal structure. 4) 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 221 Lot 19 and lies within the General Residence A (GRA) District. (LU-22-26)

SPEAKING TO THE PETITION

The applicant Thomas Hammer was present via a Zoom call to review the petition. He said he wanted to make the property less nonconforming by installing a new garage. He said the deck would be removed and a smaller deck would be added in the back as a mudroom for access. He said the existing garage was in bad shape and that the project would improve the 35 percent coverage and reduce the non-pervious conditions on the property. He reviewed the criteria and said they would be met.

The Board had no questions. Chairman Parrott opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

*Mr. Mannle moved to **grant** the variances for the project as presented and advertised, and Ms. Margeson seconded.*

Mr. Mannle said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said substantial justice would be done because the applicant would make a nonconforming property less nonconforming by a foot and a half, and the building coverage would not change; and the newly-built garage would replace one that was falling down. He said the values of surrounding properties would not be diminished and would most likely be improved. He said literal enforcement of the ordinance would result in an unnecessary hardship. For those reasons, he said the variances should be granted. Ms. Margeson concurred. She said the building coverage was 30.5 percent, which was over the 25 percent maximum, but it was just carrying forward a pre-existing nonconforming building coverage, and the rear yard setback would be slightly improved. She said the intent of the ordinance provisions was for movement of air and light, and approving the variance would not impinge on that at all.

*The motion **passed** by unanimous vote, 6-0.*

- C. The request of 2422 Lafayette Road Associates LLC (Owner), for property located at 2454 Lafayette Rd, Unit 5** whereas relief is needed for a proposed veterinary urgent care clinic which requires the following: 1) A Special Exception from Section 10.440 Use #7.50 to allow a Veterinary Care use where the use is allowed by Special Exception. Said property is located on Assessor Map 273 Lot 3-5 and lies within the Gateway Corridor (G1) District. (LU-22-93)

SPEAKING TO THE PETITION

Project architect Nicholas Collins was present on behalf of the applicant. He said they wanted to fill a gap that regular veterinary care might not. He said the unit was 3,670 square feet and would include a lobby reception area, 5-6 exam rooms, rest rooms, a treatment area, pharmacy, x-ray

room, animal recovery space, a vet office, utility space, and a break room for staff. He reviewed the special exception criteria, noting that the facility would not have kennels and that the holding areas were for short-term recovery purposes only. He said any noises would be isolated and the number of required parking spaces would be reduced, and all changes would be on the interior.

The Board had no questions, and Chairman Parrott opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

*Ms. Margeson moved to **grant** the special exception for the petition as presented and advertised, seconded by Vice-Chair Lee.*

Ms. Margeson said the standards as provided by the ordinance for the particular use permitted by special exception were met. She said it was a veterinary care clinic, which was allowed by special exemption in that zoning area, and would pose no hazard to the public or adjacent properties on account of potential fire, explosion, or release of toxic materials. She said there were no toxic materials in the facility, and the medical gas, X-rays, and medication would comply with State laws. She said granting the special exception would pose no detriment to property values in the vicinity or change in the essential characteristics of any area including residential neighborhoods, businesses or industrial areas on account of the location and scale of the buildings and other structures, parking areas, accessways, odors, smoke, gas, dust, or other pollutants, noise, vibration and so on. She said there would be no change in the essential character of the business area because it was a strip mall with a pet store at the other end and there was nothing that would create those kinds of nuisances for the abutting property owners. She said there would be no creation of a traffic safety hazard or substantial increase in the level of traffic congestion in the vicinity because the applicant was only required to provide a total of eight parking spaces for every 500-sf use in the vicinity, and the operating times would be less use in that strip mall. She said granting the special exception would pose no excessive demands on municipal services including but not limited to water, sewer, waste disposal, police or fire protection, and schools because there was nothing about the business that would implicate any of those things. She said the project would pose no significant increase of stormwater runoff onto adjacent properties or street because it was just an interior buildout of an existing storefront. Vice-Chair Lee concurred and had nothing to add.

*The motion **passed** by unanimous vote, 6-0.*

- D.** The request of **Nicole Giusto (Applicant)**, and **Cooper Malt LLC (Owner)**, for property located at **650 Islington St, Unit C** whereas relief is needed for a proposed veterinary care clinic which requires the following: 1) A Special Exception from Section 10.440 Use #7.50 to allow a Veterinary Care use where the use is allowed by Special Exception. Said

property is located on Assessor Map 155 Lot 5-C1 and lies within the Character District 4-W (CD4W) and the Historic District. (LU-22-92)

SPEAKING TO THE PETITION

Attorney Tim Phoenix was present on behalf of the applicant. He said the proposal was for a regular veterinary office that would take up the first floor of the building, house three employees plus the owner, and have three exam rooms, a surgery suite, a treatment room, and an X-ray room. He said six parking spaces would be required, including four with signage for customers, and were approved by the building owner and condo association. He reviewed the special exception criteria, especially noting that there would be regular business hours; no kennel, training, grooming, or sales; no exterior changes to the building except for signage; and no impact on traffic because it was located in a walkable downtown area.

The Board had no questions. Chairman Parrott opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

*Mr. Mannle moved to **grant** the special exception for the petition as presented, and Ms. Eldridge seconded.*

Mr. Mannle said the use was permitted by special exception and that it would pose no hazard to the public or adjacent properties on account of potential fire, explosion, or release of toxic materials. He said granting the special exception would pose no detriment to property values in the vicinity or change in the essential characteristics of any area including residential neighborhoods, businesses or industrial areas on account of the location and scale of the buildings and other structures, parking areas, accessways, odors, smoke, gas, dust, or other pollutants, noise, vibration and so on. He said there would be no creation of a traffic safety hazard or substantial increase in the level of traffic congestion in the vicinity and no excessive demands on municipal services including but not limited to water, sewer, waste disposal, police or fire protection, and schools. He said granting the special exception would pose no significant increase of stormwater runoff onto adjacent properties or streets, especially considering that there use to be the same proposal, just further down the street on the other side. He said he supported the application. Ms. Eldridge concurred and had nothing to add.

*The motion **passed** by unanimous vote, 6-0.*

- E. The request of **Thomas and Lindsey Vickery (Owners)**, for property located at **37 Orchard Street** whereas relief is needed for a proposed addition which requires the following: 1) A Variance from Section 10.521 to allow 26.5% building coverage where

25% is the maximum allowed. Said property is located on Assessor Map 149 Lot 9 and lies within the General Residence A (GRA) District. (LU-22-95)

SPEAKING TO THE PETITION

Designer Amy Dutton was present on behalf of the applicant. She reviewed the petition and explained that the addition would contain an expanded kitchen and a primary bedroom and bath suite and would match the back elevation roofline. She reviewed the criteria, noting that it would blend into the neighborhood and that the abutter who was most affected was in favor of the project. She said the hardship was that the lot was angled.

The Board had no questions. Chairman Parrott opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

*Mr. Mannle moved to **grant** the variance for the petition as presented, seconded by Ms. Eldridge.*

Mr. Mannle said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance, would do substantial justice, and would not diminish the values of surrounding properties. He said literal enforcement of the ordinance would result in an unnecessary hardship because the applicant only wanted to make a 1.5 percent change in building coverage, which was small for the improvement of the property. He said the variance should be granted. Ms. Eldridge concurred, noting that the small lot was much smaller than the zoning would allow, and any change to the building would increase the coverage.

*The motion **passed** by unanimous vote, 6-0.*

- F.** The request of **London Bridge South Inc. (Owner)**, for the property located at **114 Saratoga Way** whereas relief is needed to amend a previously approved application to merge two lots and demo existing structures in order to construct a 4 unit multi family dwelling which requires the following: 1) A Variance from Section 10.521 to allow a lot area per dwelling unit of 3,736 square feet where 5,000 square feet is the minimum required; and 2) A Special Exception from Section 10.440 Use #1.51 to allow 4 dwelling units where the use is allowed by a special exception. Said property is shown on Assessor Map 212 Lot 112 and lies within the General Residence B District. (LU-20-164)

SPEAKING TO THE PETITION

Attorney Tim Phoenix was present on behalf of the applicant. Construction Manager Joel Asadoorian was also present. Attorney Phoenix said they wanted to amend a previously-granted

variance and special exception. He said his client bought the property after the previous approval and went forward with some renovations, but it was determined by the City Staff that some of the physical changes to the building were too much for an administrative approval, so he was asking for approval to amend the site plan. He compared the approved site plan and the changed site plan, noting that the skylights would be replaced by an eyebrow dormer, another dormer would be stretched to the building's edge, a new fence would be installed, and an electrical box would be moved on site. He said a curved roof would have minor window treatments and the wall would come down to get it closer to the front wall. Mr. Asadoorian said he hadn't known that changes weren't allowed, and he explained why the changes were made.

Mr. Mannle said it seemed like the applicant tried to copy the design that was already in Atlantic Heights but then decided not to. Attorney Phoenix said there was discussion at the previous submission of how it fit in with Atlantic Heights, but there was a wood-frame condo townhouse nearby that influenced the new design. He said the Board previously said the design was a nice fit for the area, so the owner made some changes that made the home more livable.

Chairman Parrott opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Steve McGrath of 185 Raleigh Way called in via Zoom and said his backyard abutted the proposed development and that the eyebrow dormer faced the Atlantic Point side and not the Atlantic Heights side. He said it looked like there were more massing on his side, and the building was 15 feet away from his back fence. He noted that the roofline was three stories in a neighborhood of two stories and that it was 13 feet higher than the two-story houses around it. He said he was also concerned about the utility infrastructure and thought the developer precipitated a lot of activity from Eversource because they replaced a dilapidated pole on the corner of his lot and would place another pole on his side boundary. He said he respected the proposal but urged the Board to look at the elevation and the massing and perhaps stipulate that all new utility poles, rigging, and buttress go on the applicant's property or that he be compensated for the new triangle of telephone pole configurations he hadn't planned on.

Attorney Phoenix said the issue was an Eversource one because Eversource determined what they needed for poles. He noted that Mr. McGrath said the original pole was dilapidated. Attorney Phoenix said Eversource was responsible for determining its replacement and location. He said the third floor of the development was within the roofline, so it wasn't a true third-story building. He said the skylights were removed on Mr. McGrath's side and the dormers were moved a bit farther out, so he failed to see how those changes negatively impacted Mr. McGrath compared to what was approved two years before.

Chairman Parrott encouraged Mr. McGrath to call the Division of Public Works, who might be able to help him with his issues. No one else spoke, and he closed the public hearing.

DECISION OF THE BOARD

*Ms. Eldridge moved to **amend** the previously-approved variance and special exception, seconded by Mr. Mannle.*

Ms. Eldridge said the changes were made for aesthetic, comfort, and practicality reasons as well as cost reasons. She said it was a different design but didn't really change what was happening to the property. She said the Board wasn't a design review board but that she didn't think the changes would affect the neighborhood and felt that the project could go ahead as planned. Mr. Mannle concurred and had nothing to add.

*The motion **passed** by unanimous vote, 6-0.*

- G.** The request of **Katherine Nolte and Angela Davis (Owners)**, for property located at **276 Aldrich Road** whereas relief is needed to remove existing mudroom and construct covered front porch which requires the following: 1) Variances from Section 10.521 to allow a) 33% building coverage where 20% is the maximum allowed; b) 7.5 feet left side yard where 10 feet is required; and c) 7.5 feet secondary front yard where 30 feet 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 166 Lot 14 and lies within the Single Residence B (SRB) District. (LU-22-97)

SPEAKING TO THE PETITION

The applicant Kate Nolte was present and said she wanted to replace the mudroom with a covered front porch because the mudroom caused water and structural issues and she wanted a more usable outdoor space. She said they lived on a corner lot and had trouble accessing the exterior from that lot, given the large easement and right-of-way on Sewall and Aldridge Roads. She said they had maintained that easement since 2018, so they wanted to have access like all the other neighbors. She reviewed the criteria and said the porch would not impede on the abutters, would enhance the character of the neighborhood, and would bring the home up to the standards that the rest of the homes on the street had. She said the hardship was the home's elevation and its location on a corner lot that provided no access to an outside area.

The Board had no questions. Chairman Parrott opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

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

Mr. Mannle said he drove by the house and thought that replacing the mudroom with a front porch would make the home look like most of the other properties. He said the increase in building coverage would be slight, as with any place on Aldrich Road. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance, would do substantial justice, would not diminish the values of surrounding properties, and would result in an unnecessary hardship. He said the variance requests should be approved. Mr. MacDonald concurred and had nothing to add.

The motion passed by unanimous vote, 6-0.

H. REQUEST TO POSTPONE 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). **REQUEST TO POSTPONE (LU-22-89)**

DECISION OF THE BOARD

*The petition was **postponed** per the applicant's request by unanimous vote.*

I. The request of **Thomas J. and Angela Mita (Owners)**, for property located at **81 Taft Road** whereas relief is needed to construct a 235 square foot addition which requires the following: 1) A Variance from Section 10.521 to allow a 17.5 foot secondary front yard where 30 feet 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 247 Lot 87 and lies within the Single Residence B (SRB) District. (LU-22-98)

SPEAKING TO THE PETITION

The construction manager Dave Ciccalone was present on behalf of the applicant. He explained that the property was a nonconforming corner lot and had secondary frontage along Elwyn Avenue and that the addition would extend into that secondary frontage. He reviewed the criteria and noted that the overall footprint of the addition was small and would be built to match the similar additions in the neighborhood. He said the existing fence was too tall and too close to the road and would be removed and that the rear abutter would have a better site line view when merging into traffic. He said the addition would contain a master bedroom and that putting the addition anywhere else on the property would impact the enjoyment of the backyard. The Board had no questions. Chairman Parrott opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

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

Ms. Eldridge said it was a modest request and that having a secondary front yard always complicated things and created its own hardship. She said the slight change in the front yard would give the applicant an advantage and would be a good tradeoff. She said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. She said the home would be improved and would not change the character of the neighborhood in any way. She said it would do substantial justice because the change for the family would be far greater than any effect it would have on anyone else and that it would not diminish the values of surrounding properties but would most likely increase them. She said there would be no substantial relationship between the public purposes of the ordinance and their specific application to the property. She said the proposed use was a reasonable one and that the variances should be granted. Mr. Mannle concurred and said it was a very small request and because the home was on a corner lot, it had a quirky double-sided front yard.

*The motion **passed** by unanimous vote, 6-0.*

At this point in the meeting, it was moved, seconded, and passed (6-0) to go past 10:00 p.m.

- J.** The request of **Christopher Mulligan (Applicant)**, and **One Hundred Forty West Road Condos (Owner)**, for property located at **140 West Road** whereas relief is needed to convert existing structure into a private indoor recreation facility which requires the following: 1) A Variance from Section 10.440 Use #4.30 to allow and indoor recreation use where the use is not permitted. 2) A Variance from Section 10.1113.41 to allow parking to be located 2 feet from the front lot line where 50 feet is required. Said property is located on Assessor Map 252 Lot 2-13 and lies within the Industrial (I) District. (LU-22-99)

SPEAKING TO THE PETITION

Attorney Chris Mulligan was present on behalf of the applicant, along with the project team. He said they wanted to convert the former Blitz Trampoline Park into a members-only indoor recreation facility. He said the owner's background included owning and operating fitness centers and clubs, so he had a lot of experience running facilities on a similar membership-only basis. He noted that the owner was also involved with charitable organizations and would make the facility available for charity events. He said internal improvements would be made by adding gaming stations, sport simulators, billiards, arcade games, a gym and accessory lounge area. He said the building was in the industrial zone and was an allowed use there or anywhere in the city.

He said the prior owner got a special exception in 2013 to permit the Blitz facility that was a membership model similar to the model the applicant wanted. He said some of the proposed improvements would move the parking area closer to West Road but that it was already an existing nonconforming condition that would be made slightly more nonconforming because the travel aisles would be made more conforming, which was the reason relief was needed for the parking setback. He reviewed the criteria, noting among other things that the building wouldn't change in any material way and that the neighborhood already had diverse commercial uses. He said the nearest abutter who was a plumbing supplier was in favor. He said the tradeoff for the parking setback relief would be the construction of code-compliant maneuvering aisles on the site, which would benefit the public. He said the hardship was the existing built environment situated in a 90-degree bend on West Road.

Ms. Margeson noted that Attorney Mulligan said that private indoor recreation wasn't allowed anywhere in the ordinance. Attorney Mulligan said he misspoke. Ms. Margeson clarified that it was allowed and that there was no distinction between private and public. She said there was another golf place that was a private indoor recreational use and that it was allowed in a lot of the zones in the city, either by special exception or outright permission.

Chairman Parrott opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DISCUSSION OF THE BOARD

Mr. Mannle wondered if the Blitz Park had applied for a variance instead of a special exception, then the applicant wouldn't have to apply for it. Mr. Stith said the applicant did because it was a completely different use. Ms. Margeson said the zoning ordinance cited some examples of indoor recreation use, like a bowling alley or arcade, but the list wasn't exhaustive. She said the application was similar in some ways but that she had less of a problem with it because there wasn't the heavy industrial use around the property that was seen earlier in the evening.

DECISION OF THE BOARD

*Vice-Chair Lee moved to **grant** the variances for the petition as presented and advertised, seconded by Mr. Mannle.*

Vice-Chair Lee said one variance was to allow indoor recreation where the use was not permitted, and the other variance was to allow parking two feet from the front line. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said the first use was reasonable because it was basically an indoor recreation facility, and the parking location would make the travel lanes more code compliant and easier to maneuver in. He said substantial justice would be done because the benefit to the applicant would not be outweighed by any harm to the general public. He said it was an industrial/retail

area and he didn't see that the values of surrounding properties would be diminished in any way. He said the hardship was that the applicant was burdened by the zoning restriction stating that the use was not permitted without a variance, so it would make the property different from similarly-situated properties. He said the proposed use was reasonable and felt that both variances should be granted. Mr. Mannle concurred and had nothing to add. Ms. Margeson noted that the property had been vacant for a while and there were no industries rushing to get in there.

*The motion **passed** by unanimous vote, 6-0.*

II. OTHER BUSINESS

There was no other business.

III. ADJOURNMENT

The meeting was adjourned at 10:24 p.m.

Respectfully submitted,

Joann Breault
BOA Recording Secretary