

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

7:00 P.M.

January 24, 2023

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

MEMBERS EXCUSED: None.

ALSO PRESENT: Stefanie Casella, Planning Department

Chair Eldridge called the meeting to order at 7:00 p.m.

III. NEW BUSINESS – *Continued from January 17, 2023*

- E. The request of **Ashley and Robert T Blackington (Owners)**, for property located at **65 Mendum Avenue** whereas relief is needed to construct an addition to the existing primary structure which requires 1) Variance from Section 10.531 to allow a 7-foot setback where 10 feet is required. Said property is located on Assessor Map 148 Lot 11 and lies within the General Residence A (GRA) District. (LU-22-241)

SPEAKING TO THE PETITION

The applicant Ashley Blackington reviewed the petition, noting that the addition would have a bathroom and mudroom. She said the back door to the backyard was along the property line and that granting the variance would make it more in conformance with the current setback requirements. She reviewed the criteria and said they would be met.

In response to Vice-Chair Margeson's questions, Ms. Blackington said the current back door was between the fence and the side of the house and would move to the right side of the addition. In response to Mr. Rheame's questions, Ms. Blackington said they did not plan to tear down the current entrance and exit along the side and would just move the door, leaving a space that would become a pantry. [She said they would add a window and the bumpout would not be demolished. She clarified that there originally was just one door on the bumpout and they put a second one in for access to the backyard. Mr. Rossi said the reason the applicant needed the variance was because the proposed addition infringed on the 10-ft setback, and he asked why it was proposed there instead of to the right where it would be ten feet or more from the lot line instead of seven feet. Ms. Blackington said the bulkhead was on the right side of the house and the stairs went down from the

back door, which was necessary to have space for the laundry and bathroom, so they ended up with seven feet instead of ten feet.

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

*Mr. Mannle moved to **grant** the variance request as presented, seconded by Mr. Rossi.*

Mr. Mannle said Mendum Avenue was nonconforming, like most avenues and houses in Portsmouth. Citing Section 10.223.21 of the zoning ordinance, Mr. Mannle said granting the variance would not be contrary to the public interest because the public wouldn't even know about the addition because it would be behind the house. Referring to Section 10.233.22, he said granting the variance would observe the spirit of the ordinance because the setback would be greater than what was currently there. He said it would still be nonconforming by three feet but it was a small request. Referring to Section 10.233.23, he said substantial justice would be done because the simple addition would provide better access to the backyard. Referring to Section 10.233.24, he said granting the variance would not diminish the values of surrounding properties because the addition would be useful and would likely increase property values. Referring to Section 10.233.25: literal enforcement of these provisions would result in an unnecessary hardship. 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 purpose of the ordinance's provision and its specific application to that provision to the property. The proposed use is a reasonable one. Or, owing to these special conditions, the property cannot be reasonably used in strict conformance with the ordinance and the variance is therefore necessary. Mr. Mannle said anyone could argue that they could do it here or there, but it wasn't allowed in the front of the house. He noted that the applicant said the back door would stay, so it seemed like the only logical place, and enforcing the variance would be a hardship. He said those were the reasons for his motion to approve.

Mr. Rossi concurred. He said the location of the bulkhead made it not possible to locate the addition within the setback specified by the ordinance, which is a hardship of the property that militates toward allowing the variance. With regard to observing the spirit of the ordinance, he said the purpose of the setbacks was to avoid overcrowding neighboring properties with excessive massing, and since it was set back farther than the existing wall of the main structure, he didn't see that as an issue and thought it did observe the spirit of the ordinance as intended.

*The motion **passed** by unanimous vote, 7-0.*

- F. The request of **Lucky Thirteen Properties LLC (Owner)**, for property located at **147 Congress Street** whereas relief is needed to expand the existing structure which requires 1) Variance from Section 10.5A41.10D to allow 2% open space where 5% is required. Said property is located on Assessor Map 126 Lot 4 and lies within the Character District 5 (CD5) Downtown Overlay and Historic District. (LU-22-192)

SPEAKING TO THE PETITION

Attorney Derek Durbin was present on behalf of the applicant, along with the owner Michael Labrie. Attorney Durbin reviewed the petition, pointing out that the industrial-looking building was presently a two-story commercial one and the plan was to repurpose it and add onto the left side to bring it more in line with the character of the other buildings. He said the renovations would activate the Maplewood Avenue side of the building and utilize the strip of landscaped land that ran alongside the building. He reviewed the criteria and said they would be met.

Mr. Mannle asked what would happen to the second entrance to the basement. Mr. Labrie said it would be eliminated and another entrance would be added on the Congress Street side. Vice-Chair Margeson asked if a café would be going into the space. Mr. Labrie said a Thai restaurant would go in. Vice-Chair Margeson said that one of Attorney Durbin's rationales was that the project would encourage retail and like business use, but the applicant was putting a restaurant in there. She said Attorney Durbin had said that the narrow building would make that difficult. Attorney Durbin said he meant that the activation of that side of the building made it very realistic, noting that the front of the building had only 30 feet of frontage and limited the window marketing or visibility associated with any business that went into that space. He said the Maplewood Avenue side of the building would draw people in and was conducive to a use like that. Mr. Labrie said the restaurant would be one of three tenants on the street level and would be small. He said there would be four entrances on Congress Street, one for each ground-floor tenant and an entrance to the second-level. Vice-Chair Margeson said that seemed to undercut the argument that the amount of frontage made it hard to use that space. Mr. Labrie said it allowed then to get a new entry into the basement, which would expand the use there, and would also allow them to break what was a single tenant into three tenants on that floor and make a more varied and dynamic use of the building.

Vice-Chair Margeson said open space was well defined in the ordinance, stating that it had to be free of all structures. She said the canopy was a structure. In terms of the special conditions, she said the storefronts on Congress Street were all narrow. Attorney Durbin said some of them did, but on that particular block, with the exception of The Lounge, the frontages were longer and wider than what their building had. He said he had done a rough calculation from the tax map and found that the buildings on the applicant's particular block did have more frontage than the applicant's lot, which was one of the smallest lots by land area. Vice-Chair Margeson said it was great that the applicant was giving the City an easement for the sidewalks but that it was typically done and that getting the easements did not rely on the variances. Attorney Durbin said it was part of the process and was discussed with City Staff. He said it wasn't a reason for the variance requests but was just one of the improvements that would be made. He said if the canopies were removed, they would be very close to the open space requirement, but the problem was that the canopies were integral to the building's design that the Historic District Commission (HDC) was willing to approve. He said he

believed that the open space had been interpreted by the ty in different ways, and the interpretation that there had to be five feet in width to constitute open space wasn't defined anywhere in the ordinance. He said areas around them that were considered to be open space were sidewalks and looked no different, but that didn't preclude landscaping. He noted that open space could be sidewalks with planters on them. Mr. Rossi asked if there was additional egress or ingress on the Maplewood Avenue side, and Mr. Labrie pointed it out on the diagram.

Mr. Rheume asked if the glazing was permanent or able to be opened. Mr. Labrie said there were awning windows above that were operable. He said they previously had double hungs on the lower floors but the HDC wanted more modern glass, so the reason for the canopies was to add an arc that would wrap around the corner of the building and soften that corner and bring more of a modern flair. Mr. Rheume said the sidewalk was technically part of the property. Mr. Labrie agreed and said that was the reason why the easement was so important. Mr. Rheume asked where the project was in the HDC process. Attorney Durbin said they had been approved. He said the area where the canopy arced around to the Congress Street side was the open space area and was where the two percent came from. He said the buildout on the side that they wanted to add onto was a request to offset with greater conformity on that side in terms of the property line offset by a loss of open space. Mr. Rheume said the new trash enclosure could not be counted as open space.

Mr. Mattson clarified that the intention was to activate the streetscape on the Maplewood Avenue side. He said even if the applicant could have an entrance on Congress Street, their intention was to have it on the Maplewood Avenue side to activate the streetscape. Attorney Durbin agreed and said it was to create a linkage with the rest of Maplewood Avenue, that would make it more pedestrian friendly. Vice-Chair Margeson asked if the current door on Maplewood Avenue went down to the basement. Attorney Durbin agreed. Vice-Chair Margeson noted that the HDC gave approval for the project before variance approval. Attorney Durbin said the calculations regarding open space had gone back and forth between the City and project engineers due to the two percent requested relief being the most conservative approach, and that was the reason that the HDC may have granted approval. Mr. Mannle asked Ms. Casella if canopies were considered part of the structure. Ms. Casella said the variance was not for the existence of the canopy, it was for the lack of open space, which the canopy inhibited. It was further discussed. Attorney Durbin said the canopy areas were considered open space as part of their existing open space calculation.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DISCUSSION OF THE BOARD

Vice-Chair Margeson said she didn't find the ordinance confusing and she thought it was clear how open space was defined, so she didn't see that there was a hardship to the application. She said she understood Mr. Labrie's desire to make maximum use of the lot, but she didn't see a hardship or a persuasive case for reducing the open space on the lot. She said she was aware that there was a

strip on the side and utilities on the back, but she thought the loss of open space around that corner would be a loss to the public that would not be outweighed by a benefit to the applicant. Mr. Rossi said he disagreed and thought the application met the criteria because it fulfilled the intended purpose of the ordinance, particularly in allowing pedestrian access to the building from the Maplewood Avenue side for commercial purposes. In regard to the special conditions of the property, he said it was an oddly shaped lot and because of that, any rectangular building on the property would end up with a long wedge-shaped space along the Maplewood Avenue side because of the angle of that street. He said he did agree that the definition of open space was clear in the ordinance but it did state that unless you have at least five feet of width, at some point in that wedge, you can't count it as open space. He said the special conditions of the property were the angular and irregular shape of the lot, bringing it out of compliance with the requirements that were quite clear for open space. He also noted that although the open space requirement was not satisfied, the building coverage was not in excess of the maximum allowed, so the actual coverage of the building was ever so slightly below the 95 percent maximum, which reinforced the nature of the shape of the lot, pushing it out of compliance as opposed to an excessive use of lot.

Mr. Rheume asked what the public interest was in not allowing the design. He said it was an oddly-shaped lot driven by the fact that the building predated the creation of Maplewood Avenue during the urban renewal project. He said that creation was viewed as a better way for traffic flow but created an odd situation. He said the small bit of green space along Maplewood Avenue wasn't very inviting to a pedestrian and the property owner wasn't obligated to maintain it as green space but would meet the five percent requirement put in place by the Character District, so he didn't think there was anything about a loss of green space. He said the proposed addition would help activate the Maplewood Avenue streetscape by having the entrance, large windows, lights, and activity. He said it would be a great step in the improvement of the area by bringing a more pedestrian feel to it. He said the definition of open space in the ordinance was clear and the applicant was asking for an exception from it. He asked if the balance was between the benefit of that slight open space and preserving an area of open sidewalk. He said the canopy was minimal and the feel would be natural and people wouldn't think it was overbuilt. He said the project was appealing overall and in the end, whatever little loss that the public would feel from the supposed loss of three percent of open space would be more than compensated for by the other added benefits of the project, such as brining the streetscape on the Maplewood Avenue side to life and providing an architecturally attractive and pleasing result. He said he was very supportive of the project.

Mr. Mattson said that, in addition to the esthetics, he was a fan of the canopies and thought they were also functional in protecting people from the weather. He said it was a way to do that without increasing the building coverage, which was under 95 percent.

DECISION OF THE BOARD

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

Mr. Rheume referred to his earlier discussion and said granting the variance would not be contrary to the public interest because there was public interest in trying to improve the streetscape along Maplewood Avenue and attempting to create more of a connection with passersby in that area. He said there was an architecturally aesthetic being sought that had been refined through an arduous process with the HDC to ensure that the final result would be something that would withstand the test of time and be consistent with all the requirements of the HDC. He said he trusted the HDC's judgment and also seconded it from an amateur perspective that the resulting design, while it did require compromises in the absolute letter of open space, would provide a substantial public benefit that validates that the variance would be in the public interest. He said granting the variance would observe the spirit of the ordinance, noting that the five percent open space was probably not being reflected by any of the other properties along that area of Congress Street. He said all the buildings there were built out to the maximum extremes for a long time, and the Downtown Overlay District headed in the applicant's direction and was what the board was looking for. He said the Character Districts were created to include more variety and did include minimal open space. He said the applicant's property was not built out completely to the property line and there were places that the public could access and still have a sense of freedom. He said granting the variance would do substantial justice because it would allow the applicant to make full use of the square footage created by the oddity of Maplewood Avenue cutting through after buildings were taken down. He asked if there was really any public interest in not having that additional three percent of open space when there would still be sidewalks. He said the back part of the property had areas that might have been counted as open space but couldn't be due to the strict determination that the applicant had for ensuring that they were being as prescriptive as possible as to what the potential impacts of their project were. He said granting the variance would not diminish the values of surrounding properties because it was an area of relatively small lots with open space in a downtown area that was built out to the property lines and probably wouldn't be perceived at all. He said the overall increase and improvement of the property and the ability to make Maplewood Avenue more pedestrian friendly would only enhance the desired nightlife that drew most people to that area of downtown. He said the hardship was that the existing building was on an oddly-shaped lot and the applicant was trying to make use of that lot but with it came architectural hindrances, like the HDC insisting on rounded canopies to reflect the rounded nature of the lot. He said the request was a reasonable one because it was minor and was the only relief that the applicant was asking for. He said nothing would be gained by the public in preventing the applicant from trying to create the new building that would outweigh any benefit that the public would get. He said he recommended approval.

Mr. Mattson concurred. He said the spirit of the ordinance for that district and the downtown in general was that it was desirable to have the lots fully built out and to promote the pedestrian experience. He said the project would activate the streetscape on the Maplewood Avenue side, where it was essentially a blank façade and not very inviting. He said the design was tastefully done, which would also be a benefit to the public. He said he was initially concerned about the sight line of vehicles turning right at Congress Street, but after visiting the site, he wasn't concerned any longer because of the stop lights. He said he knew the Technical Advisory Committee (TAC) would also review the application, so he didn't see it as an issue.

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

- G.** The request of **Timothy and Rebecca O'Brien (Owners)**, for property located at **396 Miller Avenue** whereas relief is needed to create a second driveway which requires 1) Variance from Section 10.1114.31 to allow two driveways where only one per lot is permitted. Said property is located on Assessor Map 131 Lot 24 and lies within the General Residence A (GRA) District. (LU-22-211)

SPEAKING TO THE PETITION

The applicant Timothy O'Brien was present to review the petition. He said Miller Avenue was a dangerous street and there had been many accidents in the past, which he gave a few examples of. He said exiting his driveway was dangerous and they needed a second driveway to increase their parking space, reduce the multiple car shuffle of 3-4 drivers backing into the street, and eliminate on-street parking. He noted that the property was unique because it had a long frontage. He reviewed the criteria and said they would be met.

Vice-Chair Margeson asked if the existing gravel driveway would be removed. Mr. O'Brien said they would keep that driveway and reduce it from 36'4" to 13 feet. He said they would add a 13-ft driveway cut with a gravel parking pad at the end. Vice-Chair Margeson asked if the applicant would use the existing driveway as a driveway. Mr. O'Brien agreed but said it would not be the primary driveway. He said the new driveway would allow them to reduce how much they backed out into the intersection and would also allow them to park a car or two on the other driveway. He said they didn't have enough space to turn around in the existing gravel driveway. Vice-Chair Margeson asked why the applicant would not eliminate the gravel driveway, given the safety concerns, and make the new driveway bigger. Mr. O'Brien said it would make a whole section of the yard unusable. Mr. Rossi asked if there was any intention in the future to change the shed into a garage. Mr. O'Brien said he had no plans to do so at the present time. Mr. Rossi asked why the new driveway couldn't be made big enough to turn a car around and exit the driveway frontwards instead of backwards. Mr. O'Brien said they'd have to sacrifice a lot of the yard.

Mr. Rheume asked if the 'landing pad' was part of the property when the applicant bought it. Mr. O'Brien said it was and that the area was paved over completely. Mr. Rheume said the applicant eliminated all that pavement but that part of that pavement's purpose was to allow parking maneuvering and park three cars. Mr. O'Brien said it would have allowed parking for three cars but not maneuvering. Mr. Rheume said he didn't see that a lot of issues with the current gravel driveway were resolved other than allowing the applicant one additional parking spot. He asked if the applicant considered trying to recreate some of the existing driveway to have more maneuvering room and create additional parking. Mr. O'Brien said he hadn't because it wouldn't fit the neighborhood. He said parking in the street was not acceptable in the neighborhood or by people driving by, noting that there had been a lot of honking, obscenities, and vehicle damage. Vice-Chair Margeson said she drove by the property. She asked what was behind the fence. Mr. O'Brien said there was a shed and a small courtyard. Vice-Chair Margeson said the applicant could remove the

fence to make more of a driveway. Mr. O'Brien said the section was about 20 feet wide, so it still wouldn't allow turning room for a car.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DISCUSSION OF THE BOARD

Mr. Rossi said he drove by there frequently and it was a hazard where there were cars parking along the curb because one couldn't get around it without crossing the double yellow line. He said he'd like to see something done to relieve that. Mr. Mattson said the applicant's lot was twice as wide as the neighboring lots, so two driveways would be similar spacing of curb cuts as the other lots. He agreed that the parking on the street was a safety concern and thought off-street parking would be a huge advantage to the applicant because even if the applicant had to back onto the street, the issue was more about the narrowness of the road, so parking on the street was a bigger issue than backing out. He said there could be a way for some type of three-point turning situation for the new driveway, but for the existing one, it wasn't about making it deeper and being able to turn the vehicle around because it just wasn't wide enough between the house and the property line.

Vice-Chair Margeson said she was torn because there were safety concerns, but the applicant would continue to use that driveway. She thought Miller Avenue was problematic for traffic and on-street parking, but that was the condition shared by every other house on the street. She said she didn't see why the applicant couldn't expand the driveway in the new position and just use that as a driveway. She said the lot was bigger than some of the other lots on the street. Mr. Rheume said he was also torn. He said he didn't see that what was proposed would improve safety and thought it was really about the applicant wanting additional parking and off-street parking. He thought perhaps the Parking, Traffic and Safety Committee could do something about it. He understood the desire from the applicant to have additional off-street parking but thought there would not be justification for just that benefit. He thought Mr. Mattson's point about the rhythm of the neighborhood and going contrary to the public interest had a lot to do with the nature of the neighborhood. He said the applicant had one benefit from a hardship standpoint, an unusually large lot, and what the applicant was asking for was in conformance with the driveways across the street. As far as presenting something atypical for the neighborhood in terms of entrances and exits onto the street, he said he didn't think that was a problem. He said he was supportive of the project solely for the reason of getting cars off the street and allowing the applicant adequate parking. He said there was a positive aspect to having a minimal amount of gravel along the streetscape as well.

DECISION OF THE BOARD

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

Mr. Rossi said granting the variance would not be contrary to the public interest. He said the public interest was supported by the traffic considerations that the board discussed as well as the safety considerations. He said granting the variance would promote the public interest with regard to traffic safety in that stretch of Miller Avenue. He said substantial justice would be done because the benefit to the applicant would not be outweighed by any harm to the public. He said denying the application would not result in any benefit to the public and in fact would eliminate a potential safety benefit to the public. He said granting the variance would not diminish the values of surrounding properties, noting that the board had not been presented with anyone from the neighborhood who made a claim that the project would infringe upon their property values. He said literal enforcement of the ordinance would result in unnecessary hardship, noting that the hardship of the property was the unusual size of it and the fact that along that stretch of road, one would normally see an additional driveway in that amount of frontage. He said it was a reasonable use and fit within the character of the neighborhood, and that the criteria was supported and satisfied. Mr. Mattson concurred and said that in addition to the lot being large, it was relatively wide and shallower than the others. He said the house's location on the lot could also create some hardship for a driveway location.

Mr. Rossi noted the two oak trees precluded expanding the driveway width-wise to allow better turnaround, which was also a hardship. Mr. Mannle said he had mixed feelings. He said he knew how it was to live on a busy street and try to back out of one's driveway, but he didn't know if a second driveway would accomplish that. He said he knew that the corner of the lot could have a garage in the future, but he thought the applicant would have been better served if he had proposed a circular driveway around his trees instead so that he wouldn't have to worry about backing into traffic. Vice-Chair Margeson said the purpose and intent of the zoning ordinance is that this is a single-family residence in a single-family district and all permitted accessory uses are allowed. She said a driveway is subordinate to the use of a single-family residence, and as a single-family residence, it seemed clear that the applicant wanted one driveway. She said she would not support the application. Chair Eldridge said she used to live on Miller Avenue and knew that everyone had to back out of their driveways, but the applicant's location was a difficult one. She said she agreed with Mr. Mattson about the rhythm of the driveways with the applicant's larger lot.

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

- H. The request of Karen Bouffard Revocable Trust and Karen Bouffard Trustee (Owner), for property located at 114 Maplewood Avenue** whereas relief is needed for the installation of an A/C Condenser Unit which requires the following 1) Variance from section 10.515.14 to allow a 2 foot setback where 10 feet is required. Said property is located on Assessor Map 124 Lot 4 and lies within the Character District 4-L1 (CD4-L1) and Historic District. (LU-22-256)

SPEAKING TO THE PETITION

The project architect Anne Whitney was present on behalf of the applicant. She reviewed the petition and explained why the back location was the most feasible for the a/c condenser unit. She said it would be concealed from the abutters. She reviewed the criteria and said they would be met.

In response to Vice-Chair Margeson's questions, Ms. Whitney said the a/c unit was for the new construction and the three existing units belonged to the neighbors. Mr. Rheaume noted that the applicant was before the board in 2019 to request that the property lines be moved, and he asked why it wasn't recognized at that time that a condenser would be needed. Ms. Whitney said the mechanical systems hadn't been designed at that time and the owner had decided on a more conventional heating and a/c system then.

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

Mr. Rossi said that looking at the area from the cemetery, it was clear where the compressor unit belonged. He said it was like a utility plaza between the two structures and was visually much more crowded than one would think when looking at the diagram. He said the addition of the fence would shield the units from the cemetery. He said he was supportive of the application.

*Mr. Mannle moved to **grant** the variance as presented and advertised, seconded by Mr. Rossi.*

Mr. Mannle said the board got several requests like those and the fact that the existing was one foot and was being made less nonconforming went a long way. He said given the situation with the immediate abutter, it would be an improvement. Referring to the relevant sections of the ordinance, he said granting the variance would not be contrary to the public interest. He said the public would have no interest in seeing the back side of the house. He said it would observe the spirit of the ordinance since the lot was nonconforming and would be less nonconforming, and it would do substantial justice. He said granting the variance would not diminish the values of surrounding properties and that the rebuild could only enhance those values. Relating to the hardship, he said the property had special conditions, given the location of the building and owing to those special conditions a fair and substantial relationship did not exist between the general public purpose of the ordinance and its specific application. He said it was probably the only place to put the condenser unit, and given the nature of what was behind it, he thought it was a great location.

Mr. Rossi concurred and had nothing to add.

Mr. Rheaume said he would support the application because it was the right place to put the condenser, although he was somewhat disappointed that it was previously presented before the board that there would be an improvement in the setbacks but the applicant was back to nibble a bit more. He cautioned the board members that they had to be careful when being presented with information that did not fully reflect what the ultimate plan would be.

The motion by unanimous vote, 7-0.

- I. The request of **Thomas E, Marybeth B, James B, and Meegan C Reis (Owners)**, for property located at **305 Peverly Hill Road** whereas relief is needed to renovate the existing primary dwelling into a two unit dwelling and to construct a new single unit dwelling which requires the following 1) Variance from Section 10.440 Use #1.30 to allow a two unit dwelling in the SRB District. 2) Variance from Section 10.513 to allow more than one free standing dwelling on a lot in the SRB District. Said property is located on Assessor Map 255 Lot 5 and lies within the Single Residence A (SRA); Single Residence B (SRB) and Natural Resource Protection (NRP) District. (LU-22-251)

SPEAKING TO THE PETITION

Attorney Sharon Somers was present on behalf of the applicant, along with the owners Jim and Meegan Reis. Attorney Somers noted that there was a conservation easement on the property. Mr. Reis reviewed the history of the property and the reasons why they wanted the primary dwelling renovated into a two-unit dwelling and why a new single unit was needed. Mr. Reis said that Rhoda Stevens was the immediate abutter and was in favor of the project, as were several other neighbors. He said they also wanted to improve the back field and drainage so that they could plant crops and keep the farm a working farm. Attorney Somers reviewed the criteria and said they would be met.

Mr. Rossi asked for more information on the property's history with regard to the interaction with the zoning board. Attorney Somers said they received the variance in 2015 and didn't get to it before it expired. Mr. Reis explained that it was just him, his wife, his brother and two children when he went before the board in 2015 but a lot of life circumstances had happened since then that impacted their ability to move forward with construction at the time. He said they got an extension but a few other things happened, like his sister Betsy moving in.

Mr. Rheume noted that there was a fair amount of drama trying to transfer the property into conservation and that it was a precious asset for the City. He said the board did previously grant relief for a second dwelling unit on the property, but now the applicant wanted three dwelling units. He said his concern was that a nefarious purpose could be made by a future owner that would not be as in keeping with the spirit. He asked the applicant what they thought about the board stipulating that the three dwelling units must be occupied by a familial relation or someone who's a full-time employee on the farm to preserve the precious asset. Attorney Somers said she was reluctant to agree to that because she didn't think there would be nefarious activity taking place due to the nature of the property, and the only thing that could happen would be in the two-acre portion of the parcel. She said if the owners departed in the future and three unrelated people chose to live in each of the dwellings, she didn't see that there would be any impact on the purpose of the ordinance, which was to prevent an excess impact on density. She said she could see that employees managing the forestry and agriculture might want to live there, but in terms of marketing the property in the future to restrict it to that, she didn't think she would want to impose that restriction on her client.

Vice-Chair Margeson said the multi-family dwellings were 3 or 4 dwellings that were not permitted in the Single-Family Residence A and B zones. She said if a stipulation was acceptable, she asked whether it could say that no more than three dwellings would be allowed on the lot. Mr. Reis said it

would be fine. Attorney Somers said that would be acceptable because it would go to the root of Mr. Rheume's concerns of a colony of dwellings being developed.

Chair Eldridge opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

Rhonda Stevens of 303 Peverly Hill Road said she was an abutter and that her family used to live on the applicant's property from 1944, starting with her grandparents. She referenced the letter that she submitted to the board and said she called her father before the meeting. She said his concern was that no building would be done outside of the two acres on top of the hill and that he was happy to see that a family would be part of the project. She said it was reasonable to have three units even if there were three owners and that it would be no hardship to her as a neighbor. She said it was consistent with her family's vision of what they wanted to see happen on that property.

SPEAKING IN OPPOSITION TO OR SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

*Vice-Chair Margeson moved to **grant** the variances with the following **stipulation**:*

- 1. No more than three dwelling units will be allowed on the lot.*

Mr. Mannle seconded the motion.

Vice-Chair Margeson said the variance is not contrary to the public interest and the spirit of the ordinance is observed. She said the public interest and the spirit of the ordinance analyses were intertwined, and for the purpose of the motion, she would combine the two variance requests for the two-family dwelling and for the more-than-one dwelling per lot. She said the explicit or implicit purposes of the ordinance is that the huge lot is contained in the Single Residence A and Single Residence B District and the restriction is for no more than one dwelling per lot and no more than two dwelling units, per Section 10.440.130 in the board's table of uses, to prevent excessive congestion and density. She said the applicant had a huge lot, and the buildable part of the lot is only 2.1 acres, but the total lot is 39.7 acres with the conservation easement part taken into account. She said it was in the Single Residence A and Single Residence B District but there were no nearby neighbors, so the excessive density of the lot would not actually alter the essential character of the neighborhood, and she felt that the applicant had successfully proven those two criteria. She said substantial justice would be done because the benefit to the applicant would not be outweighed by any harm to the general public or other individuals. She said the public, through its zoning ordinance, would like to density on lots, so she did not believe this was the case here, noting that it was a farm on a huge lot that wasn't really in a neighborhood *per se*, so she did not believe there would be any harm to the general public by granting the variance. She said the values of

surrounding properties would not be diminished, noting that the board did not get testimony as to that, but using their common sense, the addition of the second unit and the construction of a freestanding single unit would not harm the surrounding properties, especially given how far away they were from the subject property. She said literal enforcement of the ordinance would result in unnecessary hardship, pointing out that the hardship referred to the property's special conditions that distinguished it from others in the area and there was no fair and substantial relationship between the general public purpose of the ordinance provisions and the special application of that provision to the property, and the proposed use is a reasonable one. She said this is truly a case where there were special conditions – a farm that has 39.7 acres in Single Residence A and Single Residence B zones. She said she did not see any fair and substantial relationship between not allowing the addition of the second unit to the existing structure and the new construction of the freestanding single unit applied to that property. She said the proposed use was a reasonable one because it was a house used as a single residence use in the Single Residence A and Single Residence B District.

Mr. Mannle concurred and had nothing to add.

Mr. Rheume said he could not support the motion because he thought the stipulation was a toothless one. He said if the board approved three dwelling units that night, that would be allowed going forward. He said putting a stipulation that it would be a maximum of three units didn't address his concerns. He said the City had not done a great job in keeping that stretch of Peverly Hill Road close to single residences, noting that larger lots were developed out to a maximum and additional housing units were put in place. As part of the natural resource protection area, he thought maybe it was something the board could live with, but there was something special created there and he appreciated everything the applicant was trying to do to continue what was created. He said his fear was that they were starting to roll down the hill in having something that will go in complete opposition to what people worked very hard to do. He noted that in only five years since the board approved and extended the original application, the applicant went from two dwelling units to three, and without some kind of conditional stipulation, it could be going from 3 to 4, and so on. He said what was intended could be lost, and without something more to control it, he was concerned about the long-term nature of the unique aspect. Vice-Chair Margeson said it was a point well taken but she meant that no more than three dwelling units would be allowed on the entire lot. Mr. Rheume said the natural resource protection that was unbuildable was his concern.

Mr. Rossi said he would support it, with all due respect to the long-term considerations. He referred to a saying that stated that 'it was great to manage long term, but if you don't manage the short term, you don't have a long term'. He said in the short term, it was necessary for the family to make it a viable agricultural effort and he didn't believe that making this accommodation was appropriate for the long term. Chair Eldridge said she would support it because it was a reasonable request and density wasn't an issue. She said the three dwelling units might have some teeth but in fifteen years a future BOA could make a different decision, and she hoped they followed the rules and did it with a good intention. Mr. MacDonald said it was an exceptional instance and everything about it was commendable. He said the pressures of the economic market would be applied in the most dramatic

ways to a piece of property like that because it was spectacular. He said the cracks would eventually be found by clever lawyers from somewhere else who will find a way to own that property and then develop it again with variances that none of the board members ever imagined. He said the United States was the offspring of the United Kingdom, where development of the world had always been an imperative. He discussed it further and said he didn't think development would stop just because the board took everything into account when they voted.

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

IV. OTHER BUSINESS

There was no other business.

V. ADJOURNMENT

The meeting adjourned at 9:28 p.m.

Respectfully Submitted,

Joann Breault
BOA Recording Secretary