

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

7:00 P.M.

October 15, 2024

MEMBERS PRESENT: Phyllis Eldridge, Chair; Beth Margeson, Vice Chair; Members David Rheaume, Thomas Rossi, Paul Mannle, Jeffrey Mattson, and Thomas Nies

MEMBERS EXCUSED: Alternate Jody Record

ALSO PRESENT: Stefanie Casella, Planning Department

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

I. APPROVAL OF MINUTES

A. Approval of the **September 17, 2024 meeting minutes.**

Mr. Mattson requested two changes. On page 5 at the end of the first paragraph, he asked that the phrase ‘variance for the building permit’ be changed to ‘variance for the building footprint’. The sentence was amended to read as follows: Mr. Mattson confirmed that the ordinance did mention the building footprint size, so it was true that it was relative to the ordinance, but it was under the section for a Conditional Use Permit modification that can be asked for from the Planning Board, so it was not a variance for the building footprint.

Mr. Mattson asked that the phrase ‘living room area’ in the last sentence on page 6 be changed to ‘living area’. The amended sentence now reads: Mr. Mattson said the Planning Department deemed that the size referred to was the living area set forth by State statute of 750 square feet as opposed to the building’s footprint size, and that he also learned that the Planning Board did not grant modifications lightly.

*Mr. Rossi moved to **approve** the minutes as amended, seconded by Mr. Mannle. The motion **passed** unanimously, 7-0.*

B. Approval of the **September 24, 2024 work session minutes.**

Mr. Rossi abstained from the vote.

*Mr. Mattson moved to **approve** the minutes as presented, seconded by Mr. Nies. The motion **passed** unanimously by a vote of 6-0, with Mr. Rossi abstaining from the vote.*

II. NEW BUSINESS

- A. REQUEST TO POSTPONE** The request of **Timothy Huntly (Owner)**, for property located at **124 Raleigh Way** whereas relief is needed after the fact for the keeping of chickens which requires the following: 1) Variance from Section 10.440 Use #17.20 to allow the keeping of farm animals where it is not allowed. Said property is located on Assessor Map 212 Lot 49-1 and lies within the General Residence B (GRB) District.
REQUEST TO POSTPONE (LU-24-140)

DECISION OF THE BOARD

*Mr. Rossi moved to **postpone** the petition to the October 22 meeting, seconded by Mr. Nies.*

Mr. Rossi said a one-week extension was reasonable because the applicant was out of town.

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

- B.** The request of **Sharon Syrek (Owner)**, for property located at **47 Langdon Street** requesting relief to construct a sunroom on the rear of the existing structure which requires the following: 1) Variance from Section 10.521 to allow 43% building coverage where 35% is the maximum allowed. Said property is located on Assessor Map 138 Lot 29 and lies within the General Residence C (GRC) District. (LU-24-159)

Mr. Rheume recused himself from the petition.

SPEAKING TO THE PETITION

[Timestamp 5:20] The owner/applicant Tom Basiliere was present. Mr. Basiliere said he and his wife wanted to build a sunroom at the back of the house that would be tucked into an ell-shaped section. He noted that a staircase addition made by previous owners had left the back section of the house unusable as living space. He said the sunroom would give his family a modern living space. He said the packet included photos of abutting properties, a land survey, and letters of support from several abutters. He reviewed the criteria and said they would be met.

[Timestamp 10:16] Mr. Nies said the site plan showed the lot area as 4,121 square feet, yet the Staff Memo indicated that the lot was 3,920 square feet. He asked what the reason was for the discrepancy. Ms. Casella said she took the tax card information and did not see an issue with it because it was the more conservative number. It was further discussed. Mr. Nies asked the applicant to elaborate on how the staircase in the ell made a lot of that space unusable. Mr. Basiliere said the back staircase to the second floor reclaimed about eight feet of a 7-ft wide by 15-ft long room in the back and encroached on the room quite a bit, leaving a very small space. Vice-Chair Margeson

asked Ms. Casella if the existing lot coverage included the patio. Ms. Casella said it was under 18 inches, so it would not count toward the building coverage.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

[Timestamp 13:00] Mr. Nies asked whether the Board had to approve the lot coverage number as 43 or 45 percent coverage. It was further discussed and it was decided that 43 percent was fine.

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

[Timestamp 15:50] Mr. Nies said granting the variance would not be contrary to the public interest and would have no impact on the public's health, safety, or welfare. He said it would observe the spirit of the ordinance because there would be no change in use and the light and air would be preserved. He said granting the variance would do substantial justice because there would be no benefit to the public by denying the variance and there would be considerable harm to the applicant if it were denied. He said there was no evidence that granting the variance would diminish the values of surrounding properties. He noted that several abutters spoke in favor the petition, and if there were concerns about property values, they would have argued against it. He said literal enforcement of the ordinance would result in an unnecessary hardship because the property had several special conditions that distinguishes it from other properties. He said it was a small lot, like many of the properties in the area, and it was bigger than the 3500 square feet but not by much. He said the existing structure had been altered in such a way that at least part of the living area was not useful to the applicant. He said the location of the structure and the shape of the sun room and limiting it to one story meant that it would have little impact on the abutters. He said it would not be noticeable from the street or from one side at all, and several properties in the area were similar. He said there was no substantial relationship between the purpose of the ordinance and its specific application to the property. Mr. Mannle concurred and had nothing to add.

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

Mr. Rheume returned to his voting seat.

- C. The request of **Garrett R. Merchant (Owner)**, for property located at **33 Harrison Avenue** requesting relief after the fact for the construction of a shed which requires the following: 1) Variance from Section 10.573.20 to allow a 3 foot rear yard and 5 foot right side yard where 9 feet is required for both; and 2) Variance from Section 10.521 to allow 22% building

coverage where 20% is the maximum allowed. Said property is located on Assessor Map 251 Lot 16 and lies within the Single Residence B (SRB) District. (LU-24-179)

SPEAKING TO THE PETITION

[Timestamp 19:05] The owner/applicant Garrett Merchant was present and apologized for the after-the-fact shed. He explained that the person who sold him the 10'x12' shed told him that he would only need a permit if the house was in the Historic District. He said when he began the permitting process he discovered that he was over the usage. He reviewed the criteria.

The Board had no questions, and 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. Mattson moved to **grant** the variances for the petition as presented and advertised, seconded by Mr. Rheume.*

[Timestamp 24:30] Mr. Mattson said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said the backyard shed did not conflict with the purpose of the ordinance and would not alter the essential character of the neighborhood. He said the other neighbors also had backyard sheds in similar locations and they did not threaten the public's health, safety or welfare or otherwise injure public rights. He said substantial justice would be done because the benefit to the applicant would not be outweighed by harm to the general public or to other individuals and would clearly benefit the applicant. He said granting the variances would not diminish the values of surrounding properties, noting that it was a new shed for backyard storage. He said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. He said it was a reasonable use to have a backyard shed. He said there was no fair and substantial relationship between the purpose of the ordinance and the specific application to the property by placing the shed in a back corner similar to all the neighbors' sheds.

[Timestamp 26:18] Mr. Rheume concurred. He said the setback was somewhat less than required for the nine feet, but forcing the applicant to move the shed out by four or five feet in a few directions was not worthwhile. He said the more difficult aspect was that the current building coverage was not exactly 20 percent, and this put the applicant over by 3 percent, but it was mitigated by the fact that other similar-sized properties in the area, in terms of overall lot coverage, also had sheds placed in similar locations, so that constituted a unique mini neighborhood, and within that context, he thought it created a hardship. He said the applicant was simply asking for something that the neighbors already had. He said the sheds on the neighboring properties had not proved detrimental, so adding the shed in the proposed location was not worth making the applicant move it to a more awkward location on the property, and the 3 additional percent met all the

criteria. Mr. Mattson said the shed was a short one that essentially functioned more as a fence, and it almost seemed that, despite the request being an after-the-fact one, it probably arose because the applicant was trying to do the right thing after he pulled the building permit and triggered the request for the variance. He said the applicant's intention was good.

Mr. Rossi said he would not support the variance request. He said it shouldn't be presumed that just because an error was made, there would be a variance after the fact. He said the zoning ordinance was a publicly available document, and anyone else that may be looking at the meeting and thinking about putting a shed or other structure on their property should be aware that the expectation would be conformance with the ordinance and that they should check the ordinance before having the work done. He said that responsibility fell upon the property owner more so than the contractor, and if that had been done, a 10' x 10' shed placed two feet farther away from the rear yard probably would have accomplished the same thing for the property owner and would have only required the building coverage variance, which would probably be easy to get.

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

- D.** The request of **Northeast Credit Union** and **Liberty Mutual Insurance Company (Owners)**, for property located at **0 and 100 Borthwick Avenue** requesting relief to perform a lot line adjustment which will expand the parking lot, which is an existing non-conforming use on the lot which requires the following: 1) Variance from 10.440 to allow a surface parking lot as a principal use where it is not allowed. Said property is located on Assessor Map 259 Lot 15 and Map 240 Lot 3 and lies within the Office Research (OR) District. (LU-24-165)

SPEAKING TO THE PETITION

[Timestamp 31:28] Jeff Kilburg of APEX Design Build was present on behalf of the applicant. He said Lot 243 is a 10.74 acre lot that is currently owned by Liberty Mutual and utilized solely as a parking lot. He said the lot was built in conjunction with the original Liberty Mutual building and served 225 Borthwick Avenue. He said the lot line adjustment covered a portion of Map 259 Lot 15, which was leased by Liberty Mutual and was constructed in the early 2000s. He said the existing lot was bifurcated by Borthwick Avenue in 1969, which was the reason for the nonconforming use. He explained why the variances were needed and reviewed the criteria.

[Timestamp 33:55] Mr. Rheume said Mr. Kilburg originally said that the Liberty Mutual structure was created and the associated parking lot currently on Map 240 Lot 3 as 0 Borthwick Avenue was all one lot at one time. He asked how the original parking lot came to be on a neighboring property. Mr. Kilburg said there was an agreement between Liberty Mutual and Northeast Credit Union. He said the credit union was selling the property and the new owners would utilize the property for something different from a banking institution, so the access parking was not needed. He said Liberty Mutual needed the parking lot but did not have the lot to build it on, so they came to an agreement with Northeast Credit Union and created a lease which allows them to cover basic maintenance costs. Mr. Rheume said the lot line adjustment plan indicated that the intention was to

maintain the current access to the parking lot. He asked if there was discussion of the proposed easement across the other existing Northeast Credit Union property. Mr. Kilburg agreed. He said the existing entrance to the parking lot would remain unchanged, but as the lot line adjustment occurred, they would have to create an easement associated with it to provide proper access to Liberty Mutual to the newly-owned portion of the parking lot. Mr. Rheume asked why the applicant did not simply include the easement area so that they had their driveway and parking lot. Mr. Kilburg said, from the standpoint of creating an existing parking lot that it still utilized for the future of the credit union building, if they created a bifurcation where there was a lot line that extended and included that, they would need an easement for usage from 100 Borthwick Avenue. He said they still needed access to the south side of the parking lot.

Mr. Rossi said the current plan was to simply change the lot line and there would be no change to the pavement or parking area. He asked what the benefit to Liberty Mutual would be for getting the change. Mr. Kilburg said the parking lot was originally constructed by Liberty Mutual, so it would give them rightful ownership to that portion of the parking lot, which was a benefit. He said they currently utilized it and there was signage that differentiated Liberty Mutual parking spots from the credit union's parking spots. He said a bridge was built to access the parking lot from their abutting lot in the early 2000s, so it gave rightful ownership from that standpoint to something that they had been leasing through that process, given the arrangement with Northeast Credit Union. He said it was more of assigning rightful ownership to their parking lot rather than continuing to pay a lease over time. Mr. Mattson asked if it was because Northeast Credit Union was changing hands. Mr. Kilburg said he assumed it was because there was an existing agreement in place and that lease had been extended once, so they didn't want to go through the process of getting a variance for it.

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

[Timestamp 41:39] Mr. Rheume said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said in some way it was tricky in the sense that it wasn't really something that was recognized by the ordinance as being a primary use, but there was a logic in allowing it to be purely used in its expanded form. He said the applicant could not expand upon it but in reality, it was already there. He said the applicant created a parking lot through a lease arrangement and wanted it changed to an ownership relationship, so the essential characteristics of the neighborhood would not be affected. He said it was an open industrial area and the lot had been used as a parking lot for the adjoining property that at one time was part of the original property. He said it would be less of an argument if that division of the lots was done for a public purpose of extending Borthwick Avenue to connect to Route 33 and allow further economic

development in the area. By doing that, he said it created two separate lots and the applicants were not looking to expand upon it. He said it was nothing that was out of the characteristics of the general area and had been a longstanding use, and it accomplished what the ordinance was trying to do. He said substantial justice would be done because the applicant's interest was to take advantage of the opportunity to have all their parking on one property so that they could get out of the lease situation. He said it was nothing that the public would have an interest in to see something put on this piece of property other than the existing parking lot that had been there a long time and supported a business that was beneficial to the city. He said the balancing test weighed in favor of the applicant and would not diminish the values of surrounding properties. He said nothing on the ground would change but just the property line and somewhat of an expansion of the use on a particular lot but not for the overall neighborhood. He said the hardship was that the lot was separated many years ago and created a nonconforming lot. He said the applicant had a lease situation in place for a long time and they wanted to change it to an ownership arrangement. He said it was a special condition and a reasonable use, and he recommended approval. Mr. Mattson concurred. He said nothing was physically changing and the variance got triggered by the way the ordinance is written, which was meant to prevent other negative situations that did not apply here.

The motion passed unanimously, 7-0.

- E.** The request of **Kent and Jennifer Bonniwell (Owners)**, for property located at **332 Hanover Street** requesting relief to demolish the existing primary and accessory structure and construct a 2-living unit structure which requires the following: 1) Variance from Section 10.5A41.10A to allow: a) 2,167 square feet of lot area per dwelling unit where 3,000 square feet is required; b) a secondary front yard of 17 feet where 12 feet is the maximum; and c) a finished floor surface 6 feet above the sidewalk grade where 36 inches is maximum. Said property is located on Assessor Map 126 Lot 43 and lies within the Character District 4-L1 (CD4-L1. (LU-24-170)

SPEAKING TO THE PETITION

[Timestamp 47:50] Attorney Brett Allard was present on behalf of the applicant. He said the property was located in the CD4-1 character district and surrounded on three sides by public roads. He said they wanted to remove the existing dwelling and shed and build a two-family dwelling and that they would create two additional parking spaces by reconfiguring the parking area around the building. He explained in detail why all the three requested variances were needed. He said some of the comments submitted by the public were concerns that did not relate to the variances requested because the comments were related to the building size being too big or too tall and the possibility that it would set a precedent. He said the building size was not too tall and would not trigger the density variance and that the density issue had to be looked at separately from the other considerations. He reviewed the criteria.

[Timestamp 1:03:54] Mr. Mannle referred to the density survey of the 25 lots in the CD4 District and asked how many had the conditions prior to the CD4 zoning change. Attorney Allard said he wasn't sure about the numbers but was sure a number of the lots were old and grandfathered. Mr. Mannle asked what the square footage of each unit was. Attorney Allard said Unit A was 2,359

livable square feet and Unit B was 2,047. Vice-Chair Margeson said the uniqueness of the property was that it has three side yards and one front yard. She asked how that related to the variance for the lot area per dwelling unit. Attorney Allard said it was a package deal, and with respect to that special condition, it related more to the variance for the relief from the secondary front yard component. He said that, because the property had three secondary front yards, the applicant was restricted in terms of balancing the need for off-street parking but also achieving the maximum lot coverage buildout that the ordinance is trying to obtain. He said the special condition played more into the secondary front yard variance than the density ones, but there were other special conditions that were more relevant to the density one. Vice-Chair Margeson asked Attorney Allard to review the special conditions for the density. Attorney Allard said it really had to do with the lot size and went back to their density survey. He said several lots were old and grandfathered but constituted the current make-up of the area. He said based on that mark-up, the lot was much larger on a square footage per unit basis than most of the other lots in the area and would be larger on a square-footage basis than all six of the other two-family lots, so it was the lot size that tied into the density variance. He said the third variance was needed for the sidewalk, which was an inherent restriction of the land in terms of the slope that came down. He said there were three different special conditions tied to three different variances. Vice-Chair Margeson said the applicant could put a single-family home in and would not need the variance for lot area per dwelling. Attorney Allard agreed but said if they built a bigger home than proposed but only called it one unit, they could alleviate the secondary front yard setback.

Mr. Nies said the applicant emphasized how their lot was larger than many in the area that had multiple units on them, and as a result, their ratio of lot size to units was actually going to be bigger than many of the others, but he said Section 10.233.50 of the ordinance said that whether surrounding properties violate a provision or standard shall not be a factor in determining whether the spirit of the ordinance would be observed in the granting of the variance. He said he was confused about how the applicant could make the argument that they were doing better than the others and justified that it was consistent with the spirit of the ordinance. He said, given the explicit language of the ordinance, the Board was not supposed to consider that. Attorney Allard said he was drawing that conclusion for purposes of the hardship criteria and not the spirit of the ordinance. He said there was a lot of overlap among the criteria, and nonconformities and lot size could be unique for purposes of finding a hardship and perhaps not as relevant based on the zoning language under the spirit of the ordinance, which was more about the character of the area and the public's health, welfare and safety. Mr. Nies asked how having an oversized lot per the ordinance translated into being a rationale for not being conforming with the square footage per dwelling unit and asked what the special condition was that said the applicant could not enjoy the use of the property without that particular variance of reducing the number of square footage per dwelling unit relative to the requirements of the ordinance. Attorney Allard said the test wasn't whether or not the applicant could enjoy it but whether, owing to the special conditions that distinguish it from others in the area, there is no fair and substantial relationship between the purpose of the ordinance and the application of that requirement. He said the applicant's lot was much bigger than most of the lots in the area, which was a special condition. He said the purpose or the density requirement was to minimize congested development and the applicant was not proposing any overcrowding or congested development. He said they could propose a single-family dwelling and build the property much bigger and eliminate the on-site parking down to three spaces.

Mr. Rheaume said the CD4-L1 zoning district was unusual for the neighborhood that covered 25 properties. He said the applicant cited 22 of those 25 properties and the remaining properties were not very different. He said out of the 22 properties, there was only one that meet the 3,000 square footage requirement, and that from the applicant's perspective, the city created the CD4-11 District in an attempt to replicate the general character of the zone. He asked if the applicant had concerns about how the city decided upon the 3,000 square footage per unit per CD4-L1. Attorney Allard said he hadn't thought of it as a macro perspective or if it was the right call when the district was created. He said their focus had been on what was on the ground now. He said 3,000 square feet seemed a little high, given the surrounding density in the area, but that was the reason the Board was there to grant variances.

[Timestamp 1:16:45] Chair Eldridge opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

No one rose to speak.

SPEAKING IN OPPOSITION TO THE PETITION

Daphne Chiavaris of 40 Parker Street said she lived across the street in a modest New England style home of about 1400 square feet and had concerns about the proposed building height and density. She said it felt overwhelming for the area, and the increase of five to 16 windows facing Parker Street raised privacy concerns. She asked that the building's height and the number of windows facing Parker Street be adjusted to better align with the neighborhood's character.

Bryn Waldwick of 30 Parker Street said having two units would create a much wider building and having a mansard roof would take away the open air vs. a peaked roof. He said having high floor heights would end up with the peak of the new building seven feet above the surrounding ones. He said their views would be blocked and would leave them just looking at the sky. He said it would hurt their property's value. He said it would not be in the public interest to grant the variances because the plan was not in character or in proportion with the neighborhood.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Attorney Allard said they did not need variances for windows or the height of the building but only needed relief because they were not proposing to build all the way to all of the streets. He said if they proposed a single-family dwelling, they could go ten feet higher and ten feet wider. He said the requested variances allowed them to build a less intense use. Mr. Rossi asked if it was possible to build a lower structure by having the first floor lower. Project architect Richard Desjardins was present and said they would be willing to readjust the 6.3 ft variance to match the current 6.2 feet.

Applicant Jennifer Bonniwell asked what floor height Mr. Rossi had in mind. Mr. Rossi said if the floor height was one foot above the front sidewalk level, the structure would be five feet lower and would alleviate the neighborhood concerns about the looming nature of the structure. Ms. Bonniwell said if they moved everything down, they could not put a garage in.

Bryn Waldwick of 30 Parker Street said the height of each interior floor could be lowered.

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

DISCUSSION OF THE BOARD

[Timestamp 1:30:33] Mr. Mattson said the lot was surrounded on three sides by public right-of-ways, so it was unique, and he thought it did somewhat apply to the relief for the duplex because the density issues were related to light, air and privacy, and instead of having neighbors on three sides, it had streets on three sides, with neighbors on the opposite side of the street that were farther away. He said the proposed structure would be farther away from the neighbor with the abutting property. Vice-Chair Margeson said she struggled with the hardship criteria and said the applicant would not need any variance except for the grade issue to build a single-family home. She said the other problem was that the character district was intended to encourage development that is compatible with the established character of its surroundings and consistent with the city's goals for the preservation or enhancement of the area. She said the application ran afoul of the spirit and intent of the ordinance, and the biggest problem was the hardship. She said she did not think that the slightly larger lot really saved the applicant from that. Mr. Rossi agreed and said he was struggling to see the hardship for the 2,000+ square feet per dwelling unit.

[Timestamp 1:32:51] Mr. Rheume said there were two pieces, the setback variances and the height relative to the sidewalk variance. He said it was an unusual set of circumstances created by the fact that the zone was a relatively new character district. He said the city was trying to help better define to create a zoning area that was more reflective of the overall characteristics of a certain neighborhood as well as to incentivize moving towards a future vision of what the neighborhood could look like. In terms of the setbacks, he said it was unusual. He said what was being asked for relief was permission to not occupy the entire lot but to occupy less than that. He said it was one of the larger lots out of the 25 covered in the CD4-L1 District. He said it invited someone to tear down an existing structure. He said the fact that the applicant's property was bordered on three sides by roads and the topography of the road lent itself to the idea that those variances were probably more or less acceptable, and the Board probably did not want to encourage the applicant to make an even bigger structure than proposed. He said the second piece was the lot area per dwelling area. He said the applicant showed that all the numbers were not really compliant with the zoning ordinance, with the exception of one other property, so there was a hardship in a sense. He asked what there was about the applicant's lot that said the strict application of the zoning ordinance did not make sense. He said there was density there and the applicant was asking for something similar to what the general characteristics of the neighborhood were. He said the zoning ordinance didn't fully capture that and the petition was closer to meeting the standards than many of the neighboring lots that had pre-existing conditions within the zoning ordinance. He said he empathized with the neighbors but that the amount of windows facing someone was not controlled by the ordinance, and the ordinance encouraged taller buildings in the area. He said the applicant was trying to make his building lower than the maximum allowed. He said a neighbor's viewshed was not guaranteed. He said the criteria for property values went back to what the variances asked for that would negatively impact the

property values, not necessarily what the structure is that is allowed by the ordinance. He said he also didn't like it when the applicant brought up alternatives of what they could do instead and that it like negative pushback. Vice-Chair Margeson said she disagreed with a lot of what Mr. Rheume said, and it was further discussed. She said the lot was larger than the rest of CD-4L1 but there were many properties that were much smaller in the area than 3,000 square feet. She said there was still a problem with hardship and she did not think that the 1300 sf increase in the lot area was that significant. Mr. Nies pointed out that there were several larger lots all over the CD4-L1 District. Chair Eldridge said when she first saw the photos of the proposed building, she thought it was a terrific design, but given that it was a character district, she believed that the building would change that character. She said the mansard roof that made it seem particularly larger than the other buildings.

DECISION OF THE BOARD

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

[Timestamp 1:45:17] Vice-Chair Margeson said she believed the petition failed on a few criteria, but the most essential ones were 10.233.21 and .22, the granting of the variance would not be contrary to the public interest and would observe the spirit of the ordinance. She said the purpose and intent of the character-based zoning was to encourage development that is compatible with the established character of its surroundings and consistent with the city's goals for the preservation and enhancement of the area. She said that was accomplished by providing a range of standards for the elements of development and buildings that define a place. She said she believed that since the application included the proposed structure, it was something the Board had to consider, particularly when they were talking about the character-based zoning in which the property sits.

Mr. Mannle said there were three separate variance requests. He said he had no problem with Variance Requests B and C but did with Variance Request A. He said the CD4-L1 was part of the discussions when that part of the city coming off the old North end and Hanover Street and so on was being done. He said it was a transition neighborhood and the original request was to go from 3,500 sf to 2,000 sf and have one unit per lot. He said the Planning Department had thought that was a big leap. He said 2,000 sf would have put a lot of the lots in compliance, but the discussion went from that to dropping it only 500 sf and allowing two families. He said the request was problematic and that he would support the motion to deny. Mr. Rheume said he would not support the motion to deny. He said some of the history that Mr. Mannle talked about reinforced his decision. The concern was that multiple unit buildings could be created, but the applicant simply wanted a two-family building, and he thought that sounded like some of the thinking that went behind the ordinance. Mr. Rossi said the problem was one of the limitations of the zoning ordinance, the mansard roof as opposed to a peak roof, but the ordinance allowed that and it was an odd way of measuring building height. He thought in this district, given the intent to preserve the character of the area, it would be problematic, so he be in support of the motion to deny. Mr. Mattson said the bigger picture with character districts was getting away from looking at uses and making it more about buildings and complying with and having more allowed uses within those buildings. He

said it seemed to be more of an issue with the use of a two-family home than the structure in this case. Mr. Rossi said the Board was often asked to consider a table of numbers such as the ones they saw for the number of square feet per dwelling unit and the number of residences, but it was hard to reduce the character of a property to one number. He said there were a lot of other factors. He said many of the properties had structures on them built long before the zoning ordinance was in place. He said the Board might expect different levels of compliance when a structure is razed and a completely new structure is built on a lot that has been turned into a green field lot and there was every opportunity to comply with the zoning ordinance. He said the comparison with the older structures that predated the ordinance has its limitations in terms of the applicability of that logic.

*The motion to deny **passed** by a vote of 4-3, with Mr. Nies, Mr. Rheaume, and Mr. Mattson voting in opposition.*

THE FOLLOWING ITEMS WILL BE HEARD ON TUESDAY, OCTOBER 22, 2024

- F. The request of **Eric Benvin and James Christopher Dozier (Owners)**, for property located at **49 Cass Street** whereas relief is needed to construct a two-story addition to the rear of the home which requires the following: 1) Variance from Section 10.521 to a) allow a 3 foot side setback where 10 feet is required; b) allow a 13.5 foot rear setback where 20 feet is required; and 2) Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 156 Lot 10 and lies within the General Residence C (GRC) District. (LU-24-145)
- G. The request of **Aranosian Oil Company INC (Owner)**, for property located at **1166 Greenland Road** requesting relief for the installation of a canopy sign and lightbars which require the following: 1) Variance from Section 10.1251.20 to allow a 44 square foot canopy sign where 20 square feet is allowed; and 2) Variance from Section 10.1252.40 to allow illumination of two existing gas pump canopies. Said property is located on Assessor Map 279 Lot 2 and lies within the Industrial (I) District. (LU-24-171)
- H. The request of **Andrew Powell and Nicole Ruane (Owners)**, for property located at **339 Miller Avenue** requesting relief to demolish the existing sunroom and construct a two-story addition to the rear of the home which requires the following: 1) Variance from Section 10.521 to allow a building coverage of 28.5% where 25% is allowed. Said property is located on Assessor Map 131 Lot 31 and lies within the General Residence A (GRA) District. (LU-24-175)
- I. The request of **Port Harbor Land LLC (Owner)**, for property located at **0 Deer Street** requesting relief to construct a parking garage associated with a previously approved mixed-use development which requires the following: 1) Variance from Section 10.1114.20 to a) allow a 75 degree angle of parking on the lower level where the parking design standards do not allow it; b) allow a 17.5' one-way drive aisle on the lower level where the parking design

standards do not allow it; c) allow a parallel parking space on the upper level with a length of 19 feet where 20 feet is required; and d) allow a 10' one-way drive aisle on the upper level where 14' is required. Said property is located on Assessor Map 118 Lot 28 and lies within the Character District 5 (CD5), Historic and Downtown Overlay Districts. (LU-24-176)

III. OTHER BUSINESS

There was no other business discussed.

IV. ADJOURNMENT

The meeting adjourned at 9:00 p.m.

Submitted,

Joann Breault
BOA Meeting Minutes Taker