

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

7:00 P.M.

November 19, 2024

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

MEMBERS EXCUSED: None.

ALSO PRESENT: Stefanie Casella, Planning Department

I. APPROVAL OF MINUTES

A. Approval of the **October 15, 2024** meeting minutes.

*Vice-Chair Margeson moved to **approve** the October 15 minutes as submitted, seconded by Mr. Rossi. The motion **passed** unanimously, 7-0.*

B. Approval of the **October 22, 2024** meeting minutes.

*Mr. Mattson moved to **approve** the October 22 minutes as submitted, seconded by Mr. Mannle. The motion **passed** unanimously 6-0, with Mr. Rheame abstaining from the vote.*

II. NEW BUSINESS

Mr. Rossi recused himself from the following petition. Ms. Record took a voting seat.

- A.** The request of **Hogswave LLC (Owner)**, for property located at **913 Sagamore Road** where as relief is needed to demolish the existing home and boathouse and construct a new primary residential unit and boathouse with living unit above which requires the following: 1) Variance from Section 10.531 to allow 0 feet of frontage where 100 feet are required; 2) Variance from Section 10.334 to allow a nonconforming residential use to be extended into another part of the remainder of the lot; 3) Variance from Section 10.331 to allow a lawful nonconforming use to be extended or enlarged; and 4) Variance from Section 10.440 to allow a single family dwelling where it is not permitted. Said property is located on Assessor Map 223 Lot 27 and lies within the Waterfront Business (WB) District. (LU-24-141)

SPEAKING TO THE PETITION

[Recording timestamp 7:50] Attorney John Bosen was present on behalf of the applicant, along with the owners/applicants John and Heidi Ricci and project engineer John Chagnon. Attorney Bosen gave some handouts to the Board that included an area map and letters of support. He noted that the owners resided at 912 Sagamore Avenue and bought the subject property in 2019 and that both properties were accessed via a shared driveway. He reviewed the petition and pointed out that four of the six surrounding lots had residential units and the docks were upgraded from five boat slips to 16 boat slips that recreational boaters as well as commercial fishermen used. He said the owner wanted to replace the utility shed with a larger boathouse structure with a small apartment above it that would be leased to a waterfront business employee. He said the house was proposed to be rebuilt in a vertical expansion. He reviewed the criteria.

[Timestamp 16:30] Mr. Rheume asked how the access to the properties worked. Attorney Bosen said a private dirt road led to the property. Mr. Rheume asked if there was an easement or common ownership. Attorney Bosen said there was a private right-of-way contained in the deed. Mr. Ricci said it was a right-of-way to get him and this two abutters on the properties. Mr. Rheume asked if the current access was legal, and Mr. Ricci agreed. Mr. Rheume asked if the red garage-like structure would remain or be demolished. Attorney Bosen said it would remain. Mr. Rheume asked what the term 'recreational mariner' as stated in the packet was. Attorney Bosen said it meant private boats for personal enjoyment. Mr. Rheume asked how the applicant felt that his proposal contributed to the Waterfront Business District's intent to support business use that depends on the ocean or river for transport or resources. Attorney Bosen explained how a marina would qualify for a Waterfront Business use. Mr. Ricci said he was in discussions with someone who may rent part or all of the red structure for their equipment, which would be Waterfront Business. Mr. Rheume asked if there was anything in the deed or the way the applicant planned to set up the property that would ensure that would be the case in the future as a deed restriction on the property. Mr. Ricci said they had no plans to sell the property and that he and his wife would rent out the 912 Sagamore Ave residence and move into the 913 Sagamore residence.

[Timestamp 22:08] Vice-Chair Margeson asked how the Board would ensure that a business would continue on the property while the applicant owned it and into the future. She noted that the intent of the Waterfront Business District was to encourage businesses that depend on the water. She said the applicant said he would continue to operate the renting of boats for commercial and recreational purposes, which would allow the extension of a residential unit on the property. She asked how the applicant would feel about a stipulation, or condition, stating that a water-dependent business use should continue. Attorney Bosen said the intent was that the waterfront business would continue but that they could accept a condition that as long as the Riccis owned the property, the waterfront business would continue. Vice-Chair Margeson said the boathouse was nowhere near the creek, and she asked how the business operated and if people came onto the property and then accessed the docks in front of the house. Attorney Bosen agreed. He said the boathouse was used to store marine-related goods. Vice-Chair Margeson asked what the existing building was intended for. Mr. Ricci said it was the building closest to the water and that someone might rent it for nine months out of the year, otherwise it would be used for maintenance. He said the proposed shed was the one they wanted to make into a boathouse with heat and lights so that they could work on things in the winter. Vice-Chair Margeson said the applicant stated that residential use was necessary to support the water-dependent business uses along the creek, and she asked for more detail. Attorney Bosen

said boats were expensive and commercial boats came in and out at all hours, so it was necessary to have someone on site to monitor it. He said the single unit they were seeking approval for would be best suited for someone who would be the marine caretaker.

[Timestamp 27:46] Mr. Nies asked how the apartment above the garage would be considered different than an Accessory Dwelling Unit (ADU) and if the Board had to be concerned about ADU requirements. Attorney Bosen said ADUs were limited to 750 sf and the building would exceed that, so it would be an apartment. Mr. Nies said the drawing noted the building as an ADU. Attorney Bosen said it was an error, explaining that the term ADU was in the original plans but was removed. It was further discussed. Mr. Nies said the applicant stated in the submission that he was complying with the spirit of the ordinance and that he referred to other nearby properties that had residences that were not consistent with the Waterfront Business District. He asked how the applicant reconciled using that argument with the guidance in the ordinance that adjoining properties that violate the ordinance are not to be considered when determining whether the request complies with the spirit of the ordinance. Attorney Bosen said he gave the handout to the Board so they could visualize the surrounding properties. He said they were residential uses but sat in the Waterfront Business District. Mr. Mannle said it was already nonconforming because of the residence on the property that the applicant wanted to extend so that an apartment could be built over a boathouse. He asked how two new residences would support waterfront business. Attorney Bosen said they were only asking for one more residence for a boat caretaker and manager. Mr. Mannle asked what structure was associated with the business and where the office was. Mr. Ricci said the office would be in the new 913 Sagamore Ave dwelling, so the house would also be the business. He said they would still build the boathouse if they could not get the apartment approved.

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

[Timestamp 33:45] Mr. Mannle said he had no problem with the house extension but did have a problem with the apartment, which Variances 2 and 3 were for. He said he was okay with Variance Requests 1 and 4. Mr. Nies agreed but said there was some value in the additional boathouse because it would keep the property more of a Waterfront Business one, even though there was no residence on the lot, and an apartment above it could be useful if people had expensive boats tied at the dock. Mr. Rheume agreed that Variance Request 1 was fine because there was a legal access and it had been that way for a while. He said Variance Request 4 was okay because there was currently a residential use on the property and maintaining that use was fair. He said his concern was that it was the Waterfront Business District and the use on it was being expanded. He said it was a unique district holding onto the heritage as a waterfront-related community and wasn't sure that just recreational use of a boat was really in the spirit of what the Waterfront Business District was trying to accomplish. He said the granting of the variances would run with the property, and if the applicant chose to sell it, that use would continue. He said he feared that what the Board was being asked to provide was a very substantial home that would get sold as such and then the

waterfront business tie-ins would become disused. He said a few of the properties were landlocked and made more sense as residential, but the applicant's property was not one of those parcels. He said he would be fine with a work/live unit, where the emphasis was on the Waterfront District piece, but what he was seeing proposed was a very nice residence. He said it was not the Board's purview to change the legislation. It was further discussed. Chair Eldridge said she was in favor of the petition because she didn't think the unit over the garage would change the character of the property much. She said the Waterfront Business District had overlay places that were never waterfront businesses but were residences, and there had not been a big demand for waterfront businesses except for pleasure vehicles.

DECISION OF THE BOARD

[Timestamp 41:57] *Mr. Mannle moved to **grant** Variance One as presented. There was no second.*

Mr. Nies said he was generally in favor of the proposal and thought that waterfront businesses that support recreational boating were important. He said it was an area in which moorings were difficult to come by. He said he saw the proposal as a waterfront business one and wondered how a stipulation to keep it a waterfront business would be enforced if the owner sold the property and it wasn't a waterfront business anymore.

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

[Timestamp 44:18] Vice-Chair Margeson said she believed that it was more of an expansion of a residential use, with just a little bit of a Waterfront Business use. She said the variance failed Section 10.233.21 and .22 because it was contrary to the public interest and did not observe the spirit of the ordinance. She said the spirit of the Waterfront Business ordinance was to support waterfront businesses and businesses that depend on the water resource. She said the application did not do that and was more about expanding the residential use of the lot with a sort of side-along small waterfront business. She said she also thought the petition did not meet the criterion of doing substantial justice because she believed that the public would be harmed by the granting of that criterion, which was further encroachment of expanded residential uses on the Waterfront Business. She said she agreed with Mr. Rheume that it was up to the City Council to do a legislative fix and that it wasn't the Board's purview to rezone those areas. Mr. Mannle concurred. Mr. Rheume said he would support the motion. He said the zoning ordinance was about accommodating and supporting business uses that depend on the ocean or the Piscataqua River and not just another slip for someone's recreational boat. It was further discussed. Mr. Nies said he would not support the motion. He said a lot of the moorings were used for lobster boats and thought it was a stretch to call Sagamore Creek the Piscataqua River.

*The motion to deny **failed** by a vote of 3-4, with Mr. Nies, Ms. Record, Mr. Mattson, and Chair Eldridge voting in opposition.*

Mr. Mattson said the property was a large one of three acres, so the intent with Waterfront Business was the concern, but in terms of any residential density, he didn't think it was a problem. He said there was a good faith effort made by the applicant to incorporate the most plausible waterfront

business that was currently available. Vice-Chair Margeson said the applicant's presentation was that the business would continue and would enhance the purposes of the Waterfront Business District. She said a condition would be appropriate to require that it continue.

[Timestamp 52:19] *Mr. Nies moved to **grant** the variances for the petition as presented and advertised, with the following **condition**:*

- 1. The property owner shall continue to operate a waterfront business on the property and no additional residences shall be allowed.*

Mr. Mattson seconded the motion.

Mr. Nies said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said it was an unusual lot and access to the lot was constrained. He said it already had a residence and other waterfront businesses had residences. He said the spirit of the ordinance was observed by the owner's intent to continue to operate a small-scale waterfront business on the lot, so it would maintain waterfront business properties that promote waterfront activities. He said substantial justice would be done for the owner and he saw no benefit to the public by denying the variances. He said it was presently a lot that, while zoned Waterfront Business, did not have a significant waterfront business on it, so it would at least maintain a waterfront business there. He said granting the variances would not diminish the values of surrounding properties, noting that several of the abutters had sent letters of support. He said literal enforcement of the ordinance would result in an unnecessary hardship. He said the property has several special conditions, including that access to the lot was very limited. He said there was no substantial relationship between the purposes of the ordinance and the lot and enforcing them on the lot. Mr. Mattson concurred and added that, pertaining to the first two criteria, it was an interesting situation where the residences, even though not permitted, complemented the zoning of the Waterfront Business and were not detrimental to the Waterfront Business portion with the dock and renting out the slips. He said substantial justice would be done, noting that the Board could hope that it was an exclusive Waterfront Business use but were really comparing it to a hypothetical that wasn't really being offered. He said a replacement of that was a good faith effort of some aspect of Waterfront Business or at least in the spirit of it.

*The motion **passed** by a vote of 4-3, with Mr. Mannle, Vice-Chair Margeson, and Mr. Rheaume voting in opposition.*

Mr. Rossi returned to his voting seat and Ms. Record returned to alternate status.

- B.** The request of **Northeast Credit Union (Owner)**, for property located at **100 Borthwick Avenue** whereas relief is needed to establish an Ambulatory Surgical Center which requires the following: 1) Special Exception according to Section 10.440 to allow an Ambulatory Surgical Center where one is allowed by Special Exception. Said property is located on Assessor Map 259 Lot 15 and lies within the Office Research (OR) District. (LU-24-193)

SPEAKING TO THE PETITION

[Timestamp 57:29] Jeff Kilburg of Apex Design Build was present on behalf of the applicant. He reviewed the petition and the special exception criteria. He noted that several Ambulatory Surgical Centers (ASC) had closed in the area. He said a traffic study was submitted illustrating that the ASC and other medical users would decrease the traffic in the area.

[Timestamp 1:02:25] Mr. Rheume asked what an ASC was and what people came in for. Mr. Kilburg said it was like an outpatient surgery center but a standalone one. He said patients came in for orthopedic or plastic surgery and so on and that the center could do everything a hospital could in an outpatient setting. Mr. Rheume asked what portion of the building would be used for the AFC. Mr. Kilburg said the AFC would be on the lower level and the main and second levels would be medical offices. Mr. Rheume asked what the unoccupied suite was. Mr. Kilburg said it was a future placeholder but not allocated to the ASC. Mr. Rheume said the floor plans only showed a lot of big open spaces and asked what the intent of those spaces was. Mr. Kilburg said they would be medical office spaces and that there would be operating rooms in the ASC but not in the remaining part of the building. Mr. Rheume asked what the intent of the drive-thru area of the building was. Mr. Kilburg said it was a future intent that the tenant who took the north side of the building would convert it over and use it as usable square footage. Mr. Rheume asked if something would be done to make it clear that the building was no longer a bank. Mr. Kilburg said the bank's brand name and colors would be removed and complimentary colors to the area would be brought in as well as wayfinding signage. Mr. Rheume said he didn't see anything that addressed the drive-thru side. Mr. Kilburg said it was hard to have a rendering that captured everything. Mr. Nies said the traffic study showed the medical office building used for trip generations but not the surgical center. Mr. Kilburg said it was based on the actual number of employed people vs. the surgical center. He said all the offices would be medical ones.

Chair Eldrige 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 moved to **grant** the special exception for the petition as presented and advertised. Mr. Mattson seconded.*

[Timestamp 1:11:02] Mr. Rossi said it was a use permitted by special exception, so Section 10.233.21 was satisfied. Regarding the remaining criteria, he said the overarching consideration is that this is an application to allow a medical use in an area along the street where medical practices and facilities are common and are the predominant usage in the area. He said there would be no hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials because it was the type of activity occurring in the area on a regular basis and would not present any new hazards to the street or neighborhood. He said there would be no detriment to property values since it was a medical facility in an area predominantly utilized for various medical practices. He said in regard to safety and traffic, an adequate traffic study was submitted in support of the application. He said there would be no excessive demand on municipal services because it

was not a large facility and would not create fire hazards, water use, or waste generation outside of what would already be occurring in the nearby hospital. He said there would be no significant increase in stormwater runoff, particularly with the use of greenspace to offset the canopy. He said he found that all the criteria were satisfied. Mr. Mattson concurred and had nothing to add.

The motion passed unanimously, 7-0.

- C. The request of **PNF Trust of 2013, (Owner)**, for property located at **84 Pleasant Street and 266, 270, 278 State Street** whereas relief is needed to merge the lots and construct a four-story mixed-use building which requires the following: 1) Variance from Section 10.5A41.10.C to allow a) 98% building coverage where 90% is maximum, b) 0% open space where 10% is minimum, and c) 53% shopfront façade glazing on Pleasant Street and 52% on State Street where 70% is the minimum required; 2) Variance from Section 10.5A21.B to allow a) 55 feet of building height where 47 feet is permitted with a penthouse, b) a fourth story addition at 50 feet in height to the Church street elevation where 3 full stories and a short fourth are allowed with 45 feet maximum height permitted; 3) Variance from Section 10.642 to allow 43% ground floor residential area where 20% is maximum. Said property is located on Assessor Map Lot Map 107 Lot 77, Map 107 Lot 78, Map 107 Lot 79, Map 107 Lot 80 and lies within the Character District 4 (CD4), Historic and Downtown Overlay Districts. (LU-24-195)

SPEAKING TO THE PETITION

[Timestamp 1:15:57] Attorney Chris Mulligan was present on behalf of the applicant, along with the owner Peter Floros, project engineer John Chagnon, and project architect Michael Keane (via Zoom). Attorney Mulligan reviewed the property's history and said they were proposing a total of 17 residential units with parking space integrated into the project. He said the most significant relief needed was the height relief. He said they were exceeding the maximum height due to the desire of the Historic District Commission (HDC) that the size and scale of the Times Building be recreated as it existed before and that a short 4th mansard roof-style story on the Church Street façade of the 84 Pleasant Street building be avoided. He reviewed the other requested variances.

[Timestamp 1:27:18] Vice-Chair Margeson confirmed that the height of the penthouse was 55 feet and was the building next to the recreated Times building. Attorney Mulligan then reviewed the criteria and said they would be met.

[Timestamp 1:33:36] Vice-Chair Margeson said she could see the need for the zoning relief for the height on Church Street but noted that there was no penthouse before and wondered why the HDC wanted the height of the penthouse. Attorney Mulligan said earlier versions of the project had variance relief that included a penthouse and that they tried to remain as faithful as possible to those proposals. He said they believed that a penthouse was a reasonable accessory to the project. He said the height relief for the penthouse was slightly higher than the earlier versions because the entire height of the project had increased due to the constraints of recreating the Times Building. Chair Eldridge asked how different the height of the penthouse was from the previous one. Mr. Keane said it was about 5-6 feet higher because a few feet were picked up from aligning the floor levels. Vice-Chair Margeson asked if there was a patio structure next to the HVAC units on the roof. Mr.

Keane said there was a patio structure on three sides of the penthouse and that the HVAC equipment was on a flat area and would be screened from the Pleasant Street façade by a mechanical screen and screened from Court, State and Church Streets by building structure. He said there would be no patio on top of the penthouse itself. Vice-Chair Margeson asked if the third floor of the new building was a short floor. Mr. Keane said the mansard roof qualified as a short story based on the roof's pitch and design and that the corner building complied with building height by story but not by building height by measurement of feet. Vice-Chair Margeson said the penthouse aspect was problematic because she didn't see what was driving the need for the height variance. She asked if the former Louis building would be torn down or renovated. Attorney Mulligan said that portion was in the Historic District and that the Pleasant St façade would remain and would be renovated. He said the addition behind it that faced South Church would be demolished and rebuilt. Mr. Rheume asked if the owner only owned half the building. Mr. Keane said he owned two townhouses and someone else owned the corner townhouse. Mr. Rheume asked if the first floor use of the Pleasant Street façade would be commercial. Attorney Mulligan agreed. Vice-Chair Margeson asked if a portion of the Times Building would also be commercial on that corner. Attorney Mulligan agreed. Mr. Rheume asked if the applicant really needed relief to build the replica Times Building. Attorney Mulligan said that building was a full four stories, so they were allowed three stories and a short fourth. Mr. Rheume asked if it would be 50 feet, and Attorney Mulligan said it might be a bit taller. He said the intent of the penthouse was for residential use. Mr. Rheume noted that the old State Street Saloon building would be extended up to match the replica of the Times Building. Mr. Rossi asked what the height of the South Church was. Attorney Mulligan said he didn't know but knew that the proposed building would be taller.

Chair Eldridge opened the public hearing.

SPEAKING IN FAVOR OF IN OPPOSITION

No one spoke.

SPEAKING TO, FOR, OR AGAINST THE PETITION

[Timestamp 1:48:33] Elizabeth Bratter of 159 McDonough Street asked if the penthouse met all the setback requirements. Chair Eldridge said the applicant wasn't asking for setback relief.

Barbara Jenny and Matthew Beebe (via Zoom) said they were the abutters and owners of the other townhouse. Mr. Beebe said the heights at 92-94 Pleasant Streets were a concern because the building loomed over the original roof of the Pleasant Street property, which would encompass Mr. Floros' property starting at 84 Pleasant Street and going to the end of the block. He said in the original plans it looked like it was 10 or 12 feet taller, but with the penthouse addition it looked much taller and did not seem like a good design element. He said the windows on Court Street were not allowed by code and that one of the windows would be obscured by solar panels. He said his property might also be further developed and that the applicant didn't have the right to do things that might affect that development. He said the noisy transformers would affect his tenants and that he would want a stipulation that a specific amount of decibels would be allowed at street level. Ms.

Beebe said the State Street Saloon building was much larger than the previous plans and the back of the Louis building had gotten taller and loomed over her townhouse.

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

DISCUSSION OF THE BOARD

[Timestamp 2:08:40] Mr. Rheaume said there was a lot of relief being requested. He said it was a reasonable request for the additional building coverage, noting that much of the lot had previously been developed one way or another. He said the actual ground coverage was not significant, and any open space wasn't going to be very useful with the way the block was laid out. Regarding the shopfront façade glazing, he said the applicant explained the reasons for that. He said the 70 percent was a high bar but the applicant showed that the proposed looked a lot like what was previously there. He said there was also a desire to continue to have the appearance of the Times Building and he didn't think anyone would notice it as a negative aspect. He said the applicant made a good point about all the more usable ground floor frontage along Pleasant and State Streets being used as intended for commercial use. He said the new Church Street structure had a parking piece associated with it and really wasn't commercial. Regarding the two height requests, he said one of the abutters said a concern was the transformer, but he said a site plan review before the Planning Department and the Technical Advisory Committee would be more suitable to discuss that issue. He said the abutter was also concerned about the height of the Church Street façade as it related to their structure, but he said the penthouse would be pushed back from the street and that it wasn't incredibly objectionable from a sight line standpoint. He said the section that went over the current State Street property was a bit lower as shown in the renderings, so from the Pleasant Street perspective, there were other buildings across the street and there wouldn't be enough of it seen to say that it would be objectionable in terms of the zoning ordinance. He said he had a concern about the 55 feet of building height where 44 feet was permitted, which came back to the State Street view shed. He said the applicant was asking for a taller height than before. He said he voted against the application before because he thought that was the one element that was objectionable. He said the view corridor down Pleasant Street was very long and would include Market Square, the heart of the downtown area. He said the penthouse rising above it all would really stick out and be exactly what the Board didn't want coming out of the ordinance. He said it was asking for too much for that particular aspect of relief. Vice-Chair Margeson agreed and thought it was the objectionable part of the application. She said the height request driving the project was for the Times Building replica and didn't find any hardship for the penthouse to go up to 55 feet. Mr. Mannle agreed and said it was new construction and a blank slate, so he thought the building could conform.

DECISION OF THE BOARD

*Mr. Rheaume moved to **grant** the variances as presented and advertised for Variance No. 1 in its entirety, Variance No. 3 in its entirety, and Variance 2B only. Mr. Mattson seconded.*

[Timestamp 2:18:34] Mr. Rheaume said those specific variances met the criteria of not being contrary to the public interest and observing the spirit of the ordinance. He said the application met what the ordinance was trying to accomplish with the character districts. He said it made sense that commercial uses were not wanted along Church Street, and the glazing seemed adequate. He said

regarding substantial justice, he did not think there was anything that the public would have concerns about. He said the most difficult issue was the four-story additional height of 50 feet but that it was mainly for the recreated Times Building and there was a desire to have that look retained from a historical standpoint. He said he didn't think the penthouse on the Church Street side was objectionable and would not diminish the values of surrounding properties. He said there was a concern from one of the abutters, but he felt that it was the downtown area and the space taken up was slightly larger than what was called for. He said none of the things asked relief for were things that would affect the abutter. Regarding the unnecessary hardship, he said the history of the lot and multiple lots coming together made sense and thought what was asked for was not excessive. He said there was really no value to the open space because the Board didn't want to create anything on the Church Street façade that would draw people there, due to its narrow width and inaccessibility. He said the façade glazing was a historic recreation and something the public wanted. He said the placement of the surrounding buildings and the overall view sheds were other unique characteristics of the property that allowed the height variance requested on the Church Street side. He said it didn't make sense to require commercial on the Church Street façade. He said he recommended approval of the specific variances he specified. Mr. Mattson concurred and had nothing to add.

Mr. Nies asked for more clarification on the heights. Mr. Rheume said the height variance on Church Street was intended to also cover the façade for the replica Times Building. He said his intent was that the Times Building's height would be covered by Variance 2B. It was further discussed. Mr. Rheume said his motion was to allow everything but the penthouse.

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

*Mr. Rossi moved to **deny** Variance Request No. 2A, seconded by Mr. Mannle.*

[Timestamp 2:29:43] Mr. Rossi said the request only needed to fail one criterion to be denied, and it was the hardship criteria. He said the rest of the variance requests were driven by a desire to be consistent and true to the original historic nature of what was there before. He said the penthouse was not part of that thinking and therefore failed because it did not represent a special condition of the property that drove the need for the penthouse. Mr. Mannle said he did not think the variance request was in the spirit of the ordinance. He said all the character districts were just over ten years old. but he agreed with Mr. Rheume that the downtown building heights were left somewhat arbitrary. He said it was still the ordinance, however. He said he also had a problem with clean slate projects that intentionally violated the ordinance when they didn't have to. Mr. Nies asked what would be allowed without an alternative proposal, and it was further discussed.

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

*Mr. Rossi moved to **suspend** the rules so that Petition F, 361 Hanover Street, could be postponed. Mr. Nies seconded. The motion **passed** unanimously, 7-0.*

*Mr. Rossi moved to **postpone** Petition F, 361 Hanover Street, to the December 17 meeting. Mr. Nies seconded. The motion **passed** unanimously, 7-0.*

At this point in the meeting, Mr. Mannle left for the evening because he wasn't feeling well, and Alternate Ms. Record took a voting seat for the rest of the evening.

- D.** The request of **James and Mallory B Parkington (Owners)**, for property located at **592 Dennett Street** whereas relief is needed to demolish an existing shed and construct a new 120 square foot shed which requires the following: 1) Variance from Section 10.573.20 to allow a 3 foot side setback where 10 feet is required; and 2) Variance from Section 10.521 to allow 26% building coverage where 25% is allowed. Said property is located on Assessor Map 161 Lot 18 and lies within the General Residence A (GRA) District. (LU-24-194)

SPEAKING TO THE PETITION

[Timestamp 2:38:54] Attorney Derek Durbin was present on behalf of the applicant. He noted that he made an error in his written narrative by indicating that the rear yard setback was the right yard setback but that it would not affect the application's merits. He said the setback would be 10 feet, which was the midpoint for the rear setback. He reviewed the petition and said they wanted to replace the current 8'x8' shed with a more functional 10'x12' shed in the same location. He reviewed the criteria and said the hardship was that Whipple Street was a short connector street that extended into the front landscaping of some properties. He said the proposed shed's footprint was larger but would be buffered by a 6-ft high fence and would line up with the rear neighbor's garage.

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

[Timestamp 2:45:46] Mr. Rossi said the Board had an application that represents maintaining the status quo on the property by replacing an older shed with a new one. He said the changes in building coverage were de minimis and the rear yard setback was not changing from the existing conditions. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said no aspect of those two items would be contrary to the public interest and there would be no new hazards, traffic situations, and so on that would be considered detrimental to the public interest. He said substantial justice would be done because, since there would be no impact on the public, any loss to the applicant would not be outweighed by a loss to the public. He said granting the variances would not diminish the values of the surrounding properties, noting that the shed wouldn't be visible to the surrounding properties and it would abut against an encroaching garage on the neighboring property. He said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. He said the special condition of the property was the fact that the shed would not really be visible from Whipple or Dennett Streets. He said that special condition made the changes acceptable. Mr. Nies concurred.

The motion passed unanimously, 7-0.

- E. The request of **Stephen A and Kathryn L Singlar, (Owner)**, for property located at **43 Holmes Court** whereas relief is needed to construct a new single-family dwelling which requires the following: 1) Variance from Section 10.628.20 to allow an unfinished basement to be constructed at a flood elevation of 5.75 ft. where 10 feet is required, and 5.75 ft. exists. Said property is located on Assessor Map 101 Lot 14 and lies within the Waterfront Business (WB) and Historic Districts. (LU-22-227)

SPEAKING TO THE PETITION

[Timestamp 2:49:10] Attorney Derek Durbin was present on behalf of the applicant, along with Erik Saari of Altus Engineering and contractor Pat Driscoll, Attorney Durbin said the project had been approved by the HDC and recommended by the Conservation Commission to the NHDES for approval. He said the NHDES had a condition that the applicants move the house one foot farther back from the water, which forced the applicant to return in May and get approval for the amended variance request. He said the Inspection Department recently determined that a variance was needed to construct a basement and that it had to be constructed at Flood Elevation 10 and would stay unfinished, with no mechanical or electrical equipment, and would be used solely for storage.

[Timestamp 2:52:55] Mr. Driscoll said the proposed foundation was a good example of how rebuilding the house would improve the structure in a way that a renovation could not. He further explained how a waterproof foundation would be done by having drain and sealed sump systems and improved grading on the outside of the foundation.

[Timestamp 2:54:21] Mr. Mattson asked if the sump pump would discharge to the City's stormwater and the street, and Attorney Durbin said it would. Mr. Rheaume asked Attorney Durbin to explain why the notation in the packet described the FHZ elevation being at eight feet but the requirement will be 10 feet, yet in the post-development finish grade condition, it was said that the residence will not be located in the flood hazard zone, rendering the requirement removed. Attorney Durbin said after the site improvements were done, the opportunity would exist to apply for a Letter of Map Amendment from FEMA to remove the flood designation from the property because the regrading between the water's edge and the property would potentially remove it from the zone. He said there was no guarantee, however, that it would happen because the property had to be fully constructed out before FEMA would consider a request like that, so they would regrade the property. He said pursuant to the dredge and fill permit that was issued, part of that was to protect the structure from any potential flood hazard in the future but was also part of the overall site redevelopment improvement of the property. Attorney Durbin then addressed the criteria (timestamp 2:57:08).

[Timestamp 3:01:11] Vice-Chair Margeson said it seemed like the applicant was building a basement that could accommodate water intrusion by moving mechanicals and electrical out of the basement. Attorney Durbin agreed and said it was to take water on if the water-resistant elements of the construction didn't work for whatever reason, so there was no threat to the structure and anyone in it. Vice-Chair Margeson asked why it couldn't just be raised ten feet. Attorney Durbin said it

would require redesign of the plans and it would create an unnecessarily tall structure. He said elements would also be added that were not historically consistent. He said what they had provided was just enough headroom to go into the basement and walk. Vice-Chair Margeson said it was the Waterfront Business District and the variance that was previously granted in December 2022 was for an expansion of a nonconforming use. She asked whether that wouldn't expire soon because a building permit had not been pulled. Attorney Durbin said it would just be a new variance. He said the building permit was held so that they could come before the Board. Ms. Casella said the applicant had until December 20 to get the building permit or return for an extension. Mr. Rheume asked if the applicant considered deleting the basement. Attorney Durbin said they did but it would provide very little storage space within the house itself or the exterior. He said the idea of having a foundation and a basement had been there all along but it wasn't recognized at the time that relief was needed for it, so everything was designed around it, including the lack of storage space.

[Timestamp 3:08:15] The owner Steve Singlar said one of their goals when they first considered redeveloping the property was to keep the home in a similar look but also minimize the height. He said a lot of the feedback from the neighbors and public hearings was around adding too much height to the property that would affect their views. He said they had decided to raise the first floor finished elevation around eight inches but no one realized that it would include a basement structure. He said the reason for having the basement was for added storage.

[Timestamp 3:11:41] Peter Britz, Director of Planning and Sustainability, said this was the first floodplain variance presented and that the applicant did a good job of designing the structure to be resilient to flooding. He said they kept all the living space out of the basement and got all the mechanicals out. He said if it was a commercial building, it could be built that way, but it wasn't allowed with residential buildings, and that was the reason the applicant needed the floodplain variance. He said the project made sense for the location and for what the applicant had gone through at this point. He said that was why there was a floodplain variance section. He said the applicant would also not have to go back before the HDC to redesign the project and start over.

[Timestamp 3:12:38] Mr. Nies asked if there was a reason why the City's requirement was more stringent than FEMA's. Mr. Britz said it was to address coastal flooding and sea level rise. He said two years ago, a two-ft elevation was added to the downtown area that is in the FEMA flood zone, which is an 8-ft flood elevation, and everyone was made to build to 10 feet in new construction. He said if it was a substantial reconstruction, it had to be elevated one foot. He said it wasn't just the FEMA line but also two feet topographically in land for the first floor residential. Mr. Nies asked if it would still require a variance from the City's requirement if the applicant got a Letter of Map Amendment. Mr. Britz said it would depend on whether they went above ten feet or not. Mr. Rheume asked why the ordinance didn't reference the measures of water proofing and not putting mechanicals and electrical as being an acceptable alternative. Mr. Britz said it was a lot about residential and safety and that people said they would do one thing and then didn't do it. He said the situation here was that the applicant would elevate the ground around and provide additional safety, which made him feel more comfortable that it wouldn't be someone who would want to convert their basement into living space. He said if the applicant sold it and the buyer did want to convert it to living space, they would have their ground elevation and would be safer. Mr. Rheume asked if building on a slab or grade at the required level would meet the ordinance requirements if someone

didn't want to build their house higher. Mr. Britz said it would. Attorney Durbin discussed additional criteria that applied in Section 10.629 of the ordinance.

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

[Timestamp 3:18:00] Mr. Rossi said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said they were related to Section 10.692.2 a, b, and c, which really spoke to whether the variance would create any exposure to the public for additional expenses or changes in floodplain or increase the risk of flooding to surrounding properties. He said there was nothing in the proposal that did that, so he believed that Sections 10.233.21 and .22 of the ordinance were satisfied, in addition to the treatment of 10.629.20. He said substantial justice would be done because there would be no impact on surrounding properties, and the property owners had taken pains to make the project as unobtrusive as possible to surrounding properties, like the view of the water and so on. He said there would be no loss to the public that would outweigh the benefit to the property owners in replacing a dilapidated property that needed to be replaced. He said granting the variances would not diminish the values of the surrounding properties and that there would be no creation of additional hazards. He said the basement would be invisible to the surrounding properties and, since the owners had chosen not to solve the problem by increasing the height of the building, there would be no conceivable impact on the values of surrounding properties. He said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because of special conditions that distinguish it from others in the area. He said the special condition in this case was the overlapping mosaic of regulations and requirements, some of which were shifting during the lifespan of the project being conceived, that made it very difficult to come up with alternatives that could be stable throughout the lifetime of the planning and construction process. He said that was a condition that he thought weighed into this particular requirement for a zoning variance on this property. He said he believed that all the necessary criteria were adequately satisfied. Mr. Mattson concurred. Regarding the hardship, he said the ordinance did not account for the fact that the property would be substantially regraded, which sort of changed the situation and was a special condition of the property. He said Section 10.629 criteria was really the minimum relief necessary for the variance to satisfy the flood hazard. Mr. Rheume said he would not support the motion because he struggled with the hardship criteria and didn't see what was unique about the property, even though its location was probably more concerning than others. He said the applicant's argument was that he had not built anything yet but was far into designing the project and that redesigning it would be difficult and that he wanted his basement to put stuff in. Mr. Rheume said the flood threat was real and was getting worse and he

thought the Board had to start thinking differently and ensure that it would have to be extraordinary circumstances to say that they would allow some type of relief for this. He said there were solutions that could be put in place that would negate the concerns of the applicant as far as being far into designing the project and wanting his basement.

*The motion **passed** by a vote of 5-2, with Vice-Chair Margeson and Mr. Rheaume voting in opposition.*

- F.** The request of **361 Hanover Steam Factory LLC (Owner)**, and **Hampshire Development Corporation LLC (Applicant)**, for property located at **361 Hanover Street** whereas relief is needed to expand and renovate the existing commercial building and convert it to multi-family residential and to construct three new multi-family residential buildings which requires the following: 1) Variance from Section 10.642 to allow residential principal uses on the ground floor of the buildings; 2) Variance from Section 10.5A41 - Figure 10.5A41.10D to a) allow for "Apartment", "Rowhouse" and "Duplex" building types where they are not permitted; b) allow a ground floor height of 10.5 feet where 12 feet is required; and 3) Variance from Article 15 - Definition of Penthouse - to allow a penthouse with a setback of 8 feet from all roof edges where 15-20 feet is required and to allow no greater than 80% of the gross living area of the level of the floor below where 50% is the maximum. Said property is located on Assessor Map 138 Lot 63 and lies within the Character District 5 (CD5) District and the Downtown Overlay District. (LU-24-196)

DECISION OF THE BOARD

The petition was **postponed** to the December 17 meeting.

III. ADJOURNMENT

The meeting adjourned at 10:26 p.m.

Submitted,

Joann Breault
BOA Recording Secretary