

**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 22, 2025

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

MEMBERS EXCUSED: Thomas Rossi

ALSO PRESENT: Jillian Harris, Planning Department

Chair Eldridge called the meeting to order at 7:00 p.m. Alternate Jody Record took a voting seat for the evening. Chair Eldridge noted that Items E thru I would be held at the January 28th meeting. She noted that Item III.C, Millport INC, was requested to be postponed by the applicant.

*Mr. Mannle moved to take Item III.C, Millport INC, 1001 Islington St out of order to postpone. Mr. Mattson seconded. The motion **passed** unanimously, 7-0.*

*Vice-Chair Margeson moved to **postpone** Item III.C, Millport INC, 1001 Islington St, to the February 19 meeting, seconded by Mr. Rheame. The motion **passed** unanimously, 7-0.*

I. APPROVAL OF MINUTES

A. Approval of the December 17, 2024 meeting minutes.

Mr. Nies asked that in the last paragraph on page 2, the phrase “and would omit the other two plans” be deleted, so the sentence now reads: “He asked if the applicant was committed to developing the CUP proposal if the variances were approved.”

Mr. Rheame asked that the bottom paragraph on page 13 be amended by changing the phrase “He noted that the condo was created with relief from the Board” to “He noted that the adjacent condo complex was created with relief from the Board.” The sentence now reads: “He noted that the condo was created with relief from the Board and was already bordered by an MRB parcel that also had a business on it.”

Vice-Chair Margeson noted that there was a typographical error on page 2, second-to-last paragraph, and that the word ‘kid’ was used instead of ‘kind’. The sentence now reads: ‘Vice-Chair Margeson asked what kind of commercial uses were contemplated under the vested plan.’

*Mr. Nies moved to **approve** the December 17, 2024 minutes as amended, seconded by Mr. Mattson. The motion **passed** with all in favor.*

II. OLD BUSINESS

A. 84 Pleasant Street - Rehearing Request

[Timestamp 9:23] Chair Eldridge read the request into the record. She said the adjacent property owner near Working Stiff Properties wanted a rehearing about the granted variances from the November 19, 2024 meeting, specifically for Item 2B, an approval of a 50-ft height for the building. Vice-Chair Margeson said the letter referenced photos and sketches that were submitted, yet the Board did not have them. Chair Eldridge said she would have better understood the reason for the rehearing request if she had seen the photos and sketches. Mr. Rheaume suggested postponing the rehearing to know exactly what the appellant's concerns were before the Board made a judgment.

DECISION OF THE BOARD

*Mr. Mannle moved to **postpone** the rehearing to the February 19 meeting, seconded by Vice-Chair Margeson. The motion **passed** unanimously, 7-0.*

Mr. Rheaume recused himself from the following petition.

- B. 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)

SPEAKING TO THE PETITION

[Timestamp 16:05] Attorney John Bosen was present on behalf of the applicant, with owners Steve Wilson and Shane Forsley. Attorney Bosen said they wanted to withdraw the penthouse request portion of the petition. He said they also discovered that there was no evidence of a burial ground at the location. He said they provided a traffic study that would be vetted by the Traffic Committee and the Planning Board. He said he believed that they answered all the Board's questions previously and that their focus was to eliminate the commercial aspect from the ground floor.

[Timestamp 19:17] Vice-Chair Margeson asked about the land use variance. Attorney Bosen said it was addressed at the previous hearing. Mr. Nies said the Board had three proposals brought to them: the original plan, the Conditional Use Permit (CUP) plan, and now this plan that looked like a hybrid of the original plan and the CUP plan. Attorney Bosen said the original plan was approved at design review and that the applicant did not want to build that. He said there was a concern in the CUP plan as to the right to be able to use Hill Street, which would put the multimodal way in jeopardy. He said they thought the hybrid plan was the best plan because it still fit into the character of the neighborhood. Mr. Nies asked if the applicant formally withdrew the CUP plan from the Planning Board's consideration. He said he saw no record of it but just a request to get rid of the penthouse variance. Attorney Bosen said they were formally withdrawing the request for the penthouse variance. He said the CUP plan was illustrative of what they could have done but they did not know if they would have received a CUP approval from the Planning Board. Mr. Nies asked how many residential units were in the plan. Mr. Wilson explained that the original plan that was vested by the Planning Board had 42 units, six of which were commercial ones, but the present plan would have 42 residential units. He said they would eliminate the commercial in Buildings B and C, so they were able to drop the elevation of those buildings by one story and therefore would eliminate those floors. He said two units in Building D would be converted on the first floor to residential. He said Building A would return to the general form of the original vested building because they would add a story to that building and it would have the same 24 residential units plus the two converted units on the first floor to make 26 units, for a total of 42 units. He said it was a reduction in the number of units but an increase in residential units by four. Mr. Nies noted that at the previous meeting, Attorney Bosen said there were 46 residential units in the CUP proposed total, assuming that commercial was converted to residential. He said now the applicant was saying that there were 42 units. Mr. Wilson said at the previous hearing, they were talking about the unit count if the CUP were approved, so that would have been if the additional story had been allowed on Building A. He said the multimodal way would have had to include autos, which would have been a problem because it was a dead-end street. Mr. Nies said the traffic study was completed on December 1 and the CUP proposal was being looked at then, so he thought the study must be assuming 46 units instead of 42 units. Mr. Wilson said he believed so but that he wanted to give them the maximum number of units as a delta for the study. Mr. Nies said the Board asked for all the heights of the stories but only received the ground and second-story heights. Mr. Wilson said there was an illustration that showed the other floors. Mr. Nies noted that information was not carried over to the summary table.

[Timestamp 27:15] Vice-Chair Margeson asked if Building A was accessed by Foundry Place. Mr. Wilson said it wasn't. Vice-Chair Margeson asked if it was accessed by the path through the project. Mr. Wilson said it was accessed through the driveway off Hanover Street. Vice-Chair Margeson asked if the first two sets of windows from the ground floor up were for the first floor. Mr. Wilson said the first set of windows was for the first floor, the second set was for the second floor, the third set was for the third floor, and then there was the attic. Vice-Chair Margeson said the Board's packet showed the attic as the fourth floor. Mr. Wilson said it was not considered to be a fourth floor but was at the fourth-floor level and had residences in it. He explained that, by the zoning's definition, if it was under the roof, it was allowed to be occupied. Vice-Chair Margeson said there were discrepancies in the façade modulation length requirement and in the existing and proposed building front principal max setback and asked whether the applicant needed a variance

for it. Ms. Harris said it was an existing condition of the existing building. Mr. Nies said the applicant's letter showed the project next to the 407 Hanover Street building streetscapes and indicated that they would be submitted prior to the meeting. He asked if they were in the packet or not. He said one showed a Hanover Street perspective but he was unclear if it had 407 Hanover Street in it. Mr. Forsley said it was in their submission and was a rendering from Hanover Street, and also a head-on view from Pearl Street and a perspective from Rock Street. Mr. Nies asked where the illustrations showing 407 Hanover Street next to the project were. Mr. Forsley said he did not think any illustrations showed that.

Chair Eldridge asked for a motion to suspend the rules and a motion to accept the withdrawal of the penthouse variance request.

*Vice-Chair Margeson moved to **suspend** the rules, seconded by Mr. Mattson. The motion **passed** unanimously, 6-0.*

*Mr. Mattson moved to accept the withdrawal of the penthouse variance request, seconded by Vice-Chair Margeson. The motion **passed** by a vote of 5-1, with Mr. Nies voting in opposition.*

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

[Timestamp 35:26] Elizabeth Bratter of 159 McDonough Street said the requested information that the Board had asked for was not provided, like floor plans for Buildings B, C and D, elevations, and views. She asked how the variances could be voted on when the packet still had information that did not match the design plans. She said the applicant did not clarify what type of mansard roof would be used, which could make the building four stories and was not allowed in the zone. She noted several other inconsistencies in the packet.

Nicole Lapierre of 44 Rock Street said the penthouse was still referenced in the application as four stories and a penthouse. She said there were incorrect street widths and development entrances in the traffic study and that it also stated Foundry Place as an access point. She said the project would impact the neighborhood. She said the project was dependent in part on public land, which she didn't think the taxpayers deserved without public notice and an opportunity to speak to it. She said the grading on Rock Street appeared flat in the rendering and asked if there was a plan to change the grading. She said there were too many things that were unclear and that she was in opposition.

Attorney John Lyons, said he represented Hill Hanover LLC, a direct abutter that included 317, 319, 327, 329, 337 and 339 Hanover Street and was before the Board to say that they objected to the variance that allowed for the apartment, rowhouse, and duplex buildings. He said the applicant was talking about the withdrawal of the multimodal way and the right-of-way known as Hill Street and that the application indicated that the property also had legal frontage on Hanover Street and had the right of way to use Hill Street. He said if Hill Street were used for ingress and egress for the project, parking for the units would occur. He said the right-of-way was very narrow and could be used as a direct access for Bridge Street. He said the impact to his clients would be severe due to the number

of trips up and down the narrow street and the parking that would occur. He said the traffic study did not indicate that Hill Street would be used for ingress and egress. He said he was in opposition, but if the variance were granted, he asked that Hill Street not be a right-of-way for ingress and egress for the 42 units.

[Timestamp 46:00] Vice-Chair Margeson asked where the plans for Hill Street were in the packet. Attorney Lyons said it was Figure 7 in the last plan but in the new plan, Hanover Street and the three new buildings were indicated as well as the multimodal way leading from Hanover Street. He said Hill Street was shown running down to Bridge Street. Vice-Chair Margeson asked how someone could prevent people from using the right-of-way. Attorney Lyons said his client would have to enforce it. Mr. Mattson asked how a private right-of-way got a street sign and was used as an easement for the public to cross. Attorney Lyons said as part of the Foundry Place development, the streetscape had to be divided in half, but the City recognized it as a private right-of-way. Mr. Mattson asked if the public had an easement to use that right-of-way. Attorney Lyons said they did not and that it was being debated who had the use of it compared to his client and his property, Mr. Wilson's property, and also a condo building between the two properties. He said the rear of Foundry Place also abutted the right-of-way. Vice-Chair Margeson said she thought Attorney Lyons said previously that there was another right-of-way that a building would go on. Attorney Lyons said his clients claimed that the Hill Street right-of-way runs down through a parking lot where the development is being proposed, and if correct, there could be something worked out and the development could be built.

Susan Sperry said she was the co-chair of the Portsmouth Historic Cemetery Committee and wanted to clarify that she did extensive research and could not find any grants or deeds dating back to the 1800s that marked that there had been a cemetery anywhere in that area. She said books that did not have citations were not reliable and could not be proof of anything, so she could not prove that there had been a cemetery.

Marcie Vaughan of 407 Hanover Street said the rowhouse streetscape was not submitted by the applicant, which was important because of the way the building overshadowed her 225-year-old home and would impact her property values, her light and air, and her privacy. She said she was in favor of developing the property, but the plan was incomplete, inaccurate and inconsistent. She said if approved and no condition bound the development, the applicant could build whatever he wanted. She said she wanted to know exactly what the project would look like and whether the grade of the properties would be changed. She said the rowhouses were not consistent with the neighborhood.

Attorney Bosen said a lot of the concerns were issues unrelated to their request for zoning relief, like grading, roof styles, traffic, and whether the building fit the neighborhood. He said they were only seeking relief from commercial units on the ground floor in a plan that was vetted by the Planning Board and that the abutters' concerns could be addressed in front of the other boards.

Elizabeth Bratter said the Board could not address the variances until they saw what the project is. She said the applicant's plan was not accurate and that the Planning Board did not address the second CUP plan because it was in a work session and not voted on.

Marcie Vaughan said she thought they would be impacted by the structure's massing and scale facing her house. She asked if the property would be graded down to street level or 11 feet higher.

[Timestamp 1:08:08] Robin Husslage of 27 Rock Street (via Zoom) referred to her submitted letter in which she pointed out numerous errors and conflicting information. She said the developer stated that access would be provided by way of Rock Street and Foundry Place and a new driveway would intersect Hanover Street on the south side. She said access was not provided by Foundry Place and the location of the new driveway was moved since the traffic study, which would greatly impact the congestion and traffic. She said there were further inaccuracies in the traffic study such as the width of Rock Street, and no mention of Pearl Street, a 2-way street that had the old entrance opposite it. She said half the development buildings had mansard roofs but no surrounding properties had those. She said there was no modulation proposed on Building B, which was 82 feet long and facing Rock Street. She said she wanted to support the developer but that she had not gone far enough on reducing the height of Building D and confirming the entrance into the development.

Vice-Chair Margeson asked the applicant why the building couldn't be oriented so that traffic came off Foundry Place. Mr. Wilson said they didn't own the land between Foundry Place and their building. He said it was owned by the City and was a no-build area, and there was no place from Foundry Place where his property could be accessed. He said Hill Street was indicated as a public right-of-way three months ago, but their plan in front of the Planning Board showed a barricade of the traffic from their project to that area. He said the Planning Board vested the project's elevations. He said he had no intention to put their traffic down Hill Street.

Marcy Vaughan reiterated that she wanted information on what the rowhouse would look like and she wanted the streetscape rendering that the applicant promised.

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

DISCUSSION OF THE BOARD

[Timestamp 1:21:37] Mr. Mattson said he had faith in the City Staff that only the two variance criteria presented were needed. He said the Hill Street problem was not the Board's purview. He said the site would get developed one way or another and that the applicant could build things without variances. He said the two main points were whether the applicant could have residential instead of commercial on the first floor, which he thought would be favorable to the neighborhood, and whether the applicant could reduce a 12-ft first floor to 10-1/2 feet. He said apartments, rowhouses, and duplexes were more desirable than a big box building. He said it seemed like a win-win situation and that he had enough information to allow what was requested, even though there were discrepancies in the plan. Vice-Chair Margeson said what concerned her was the legal issue surrounding the application, and that she wished there was more of a gatekeeping function with a checklist about pending legal issues before the Staff and Board's time was taken up with it. She said if the Board approved it, the project might still not be built. She said she believed the Board had enough information to make that determination but thought the fundamental problem with the property was the CD5 zoning itself and not being in character with that zoning. She said the more natural way to access the property would be through Foundry Place. She said another issue was that

the Board got testimony from Attorney Lyons for the abutters that the variances if approved would reduce the values of their properties. She said the Board could say that Hill Street would not be used for ingress and egress. Mr. Mannle said the Board did not have enough information but that they approved variances as presented and not based on a variance request, which meant that if there were discrepancies or contradictions in the application, the applicant could choose which one he wanted. He said the Board knew that the abutters would be affected, and he was not comfortable approving any application that had so many inconsistencies. Chair Eldridge agreed and said she was also concerned that 407 Hanover Street was not included. She said it was important for her to get some scale from a streetscape view, and she would have liked to see the rear of the building. She said she was also concerned about the length of the unbroken face of the building. It was further discussed. Mr. Nies said a lot of changes were made that improved the project considerably but the Board did not have a concise package of what was being proposed now. He said people raised concerns about the requested variances, like the rowhouse, and in some cases did not get answers. Mr. Mannle said the project was going in the right direction but had a long way to go. The issue of whether Fisher v. Dover would apply was discussed.

DECISION OF THE BOARD

*Mr. Mannle moved to **deny** the variance requests.*

He said if the Board approved them, the applicant might not make any more improvements. He said the applicant did not meet the five criteria, especially diminishing the values of surrounding properties. He said if the denial triggered Fisher v. Dover, the applicant would have to make changes to the project that would be more positive and address the concerns of the abutters. Chair Eldridge said invoking Fisher v. Dover would be counterproductive because it would have to be a major change. It was further discussed.

*No one seconded the motion, and Mr. Mannle **withdrew** his motion.*

*Vice-Chair Margeson moved to **continue** the petition to the February 19 meeting. Mr. Nies seconded.*

Vice-Chair Margeson said she wanted to see a standalone variance application that had the information needed to support the variance request for the rowhouse, the three buildings, and the difference in floor height. She said she also wanted to see renderings and streetscapes from the immediate surrounding area, like Hanover, Rock, Pearl and Hill Streets, and a clear number of units. Mr. Nies asked that the information be in one packet and that the number of parking spaces be included.

*The motion **passed** by a vote of 5-1, with Mr. Mannle voting in opposition and Mr. Rheume recused.*

Mr. Rheume returned to his voting seat.

III. NEW BUSINESS

- A.** The request of **111 Front Street LLC (Owner)**, for property located at **65 Griffin Road** whereas relief is needed for after-the-fact construction of a front porch and rear deck which requires the following: 1) Variance from Section 10.521 to a) allow a 21.5 foot front yard setback where 30 feet is required; b) allow a 6.5 foot left side yard setback where 10 feet is required; c) allow a 29 foot rear yard setback where 30 feet is required; and 2) Variance from Section 10.321 to allow a building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 258 Lot 31 and lies within the Single Residence B (SRB) District. (LU-24-210)

SPEAKING TO THE PETITION

[Timestamp 1:59:30] Attorney Derek Durbin was present on behalf of the applicant. He explained that it was a unique situation because the property was the last one before the Griffin Park commercial complex. He said the application was an after-the-fact one because the applicant received the building permits that were issued in the belief that a fence ran along the left side of the property and marked the easterly boundary and extended out to an old boundary marker near the Griffin Road pavement. He said the setbacks were calculated based on that understanding. He said those plans were based on a recorded lot line adjustment plan from 1977 but that it was later discovered that the land was never formally conveyed. He said his client had a property survey done in October and discovered that a small corner of the deck also encroached into the rear yard setback. He said a rear entryway and stairs that also encroached were removed. He said the mistake was an honest one. He reviewed the criteria and said they would be met.

[Timestamp 2:10:16] Mr. Nies asked why a variance wasn't requested before for the porch since it expanded into the front yard setback. Attorney Durbin said it was believed that the property boundary was farther north and closer to the edge of the pavement due to the fact that there was an old property boundary marker pin situated directly north of another pin close to the edge of the fence, so the line was drawn directly straight out from the end of the fence to the old boundary marker, which was not a valid marker. He said that resulted in confusion on where the front property line was, as well as the side property line. Mr. Rheume noted that the Staff Memo showed it as a right yard encroachment instead of a left yard one. Ms. Harris said it was an error. Mr. Rheume said there was no indication in the Board's packet that there was another pin resulting from the surveyor's plan. He asked Attorney Durbin if his client believed in good faith that there was a pin farther out and had based the front property line on that. Attorney Durbin agreed and further explained it. Mr. Rheume said the survey made it clear that one pin was the old boundary and one was marked for the intended new boundary that never got deeded over. He said it was a legitimate reason for the side yard setback but a lot less legitimate for the front yard setback that went up to eight feet of front setback that the new porch encroached into. Attorney Durbin agreed and said a front entryway to the house was torn off and the porch was a larger feature than what existed then. He said what was found on the property was some sort of boundary marker out from the pin close to the edge of the pavement. Mr. Rheume asked how it was discovered because there was no deed recorded. Attorney Durbin said there was a subsequent meeting with the Inspection Department when an additional change to the home was being considered, so the client knew he had to get a survey done. He said it was assumed that it was just the front porch at that point but then it was realized that the corner of the deck also encroached. Mr. Rheume said it would at least solve

the side yard setback. He asked why the applicant did not just convey the property per the original plan and complete the deeded conveyance. Attorney Durbin said they did not know if the neighbor would agree to that and that everyone considered the fence to be the boundary line.

Vice-Chair Margeson said the lot line adjustment plan showed a stamp of the Rockingham County Registry of Deeds from September 1977. Attorney Durbin said at the time planning boards would approve lot line adjustment plans in the 1970s and there was never a condition placed for the recording of a deed, and property owners often believed that the property was conveyed, as well as some municipal officials. He said now they knew that a deed was needed to convey the land. Vice-Chair Margeson said the Staff Memo indicated that the building permit review relied upon a site plan that was provided for a lot line adjustment plan recorded in 1977. She said she was confused because the house was bought last year, so the title work was done then. She said there was no mention of the deed to current owners. Attorney Durbin said the contractor did a review of the municipal files, which is where the lot line adjustment plan was located, and did not do the title research.

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

[Timestamp 2:23:23] Mr. Nies said it was clearly an accident and that there was no intent to violate the zoning ordinance. He said it was a minor variance request due to the lot's location and would have no effect on light and air or the public's health, safety, or welfare. He said if the variances were not granted, the applicant would have to remove the porch and there would be no benefit to the public to cause the applicant that unnecessary expense. He said there was also no evidence that it would have any impact on the values of surrounding properties, noting that no one testified to that and none of the abutters complained. He said there were special conditions to the lot, including its location adjacent to commercial properties on one side and city-owned land on the other. He said there were houses on two sides to the east and south but they were not close and the nonconforming structure had no impact on those. He said the current property is sited on one side of it and the requested relief is relatively minor, just a few feet in the front and facing the road, and well off the right-of-way of Griffin Road. For those reasons, he said there was no fair and substantial relationship between the strict enforcement of the ordinance and the property that is justified. Mr. Mannle concurred and had nothing to add.

Mr. Rheume suggested a condition that the left side setback relief will be measured against the original property boundary prior to the 1977 record of an alternate property line. He said if the lot line were adjusted and the conveyance done in the future, he would not want it to be used as a justification for building something even closer to that property line. Mr. Nies and Mr. Mannle

accepted the condition. Mr. Rheume said he supported the motion, noting that the front porch was an open structure with a lot of open space around the home and property and was something that he thought the Board would have easily allowed prior to construction. He said the back deck discrepancy was likely a construction error but seemed far away from the property lines.

The **amended** motion was:

*Mr. Nies moved to **grant** the variances as presented and advertised with the following **condition**:*

- *The left side setback relief will be measured against the original property boundary prior to the 1977 record of an alternate property line.*

*Mr. Mannle concurred. The motion **passed** unanimously, 7-0.*

B. The request of N. E. Marine and Industrial Inc (Owner), for property located at 200 Spaulding Turnpike whereas relief is needed to install a freestanding sign 2 feet from the front property line which requires the following: 1) Variance from Section 10.1241 for a 30 square foot freestanding sign where freestanding signs are not allowed. Said property is located on Assessor Map 237 Lot 56 and lies within the Gateway Corridor (G1) and Single Residence B (SRB) Districts. (LU-24-208)

SPEAKING TO THE PETITION

[Timestamp 2:28:53] Attorney Monica Kaiser was present on behalf of the applicant, along with Shannon McNalley, the property trustee. Attorney Kaiser reviewed the petition. She said the property had frontage on Spaulding Turnpike, Farm Lane and on a paper street but the only access from the right-of-way into the property was from the driveway on Farm Lane. She said the property was bisected by two zones and the driveway was in the SRB zone. She said the owner wanted to remedy it by putting a freestanding sign just before the driveway entrance on Farm Lane to post a graphic with the name of the business and a marquee below to replace letters. She said the sign would be close enough to the road for the drivers to see it and make the appropriate turn. She said GPS did not often track to the property well, and other commercial properties had signage in that immediate area. She reviewed the criteria and said they would be met.

[Timestamp 2:36:16] Vice-Chair Margeson verified that the sign would not be illuminated. Mr. Rheume asked if the applicant had considered getting the address changed to a Farm Lane address so that people could find it more easily. Ms. McNalley said she had not. Mr. Rheume asked why the applicant felt she needed the capability to have the bottom four lines that could be changed out with different letters. Ms. McNalley said the public considered her business a wholesale one and did not know that it was open to the public. She said the lines would also be useful to advertise sales. She said the main purpose for the sign was so that people could find the business.

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 as presented and advertised, seconded by Ms. Record.*

Mr. Rheume said he thought it was a reasonable request, based off the unique situations that the applicant found herself in. He said her business was not only in one zone, which wasn't common and drove the variance that was needed. He said if it were all in the G1 zone, it would not be an issue. He said the applicant's total requested amount of signage square footage was still farther west than what the G1 District would say is the maximum allowed and that the sign would be at 174 sf where 300 sf would be allowed. He said the neighborhood was protective of the SRB portion of the property but it was for something more significant in development rather than a small sign. He said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said the sign ordinance tried to prevent visual clutter and protect single-family residence neighborhoods from signage by businesses and he thought the application met that requirement because the sign would be outside of where the actual neighborhood is and would be positioned on the opposite side of the driveway, closer to where vehicles would access the property from the more traveled highway than through the neighborhood. He said it would comply with the overall spirit of the ordinance for a G1 district. He said substantial justice would be done, noting that there was nothing that the public would have a stake in that would say the applicant's need to better direct traffic to her business and help explain what the business is would outweigh that. He said granting the variance would not diminish the values of surrounding properties because the modest sign would be far away from the established neighborhood and would not impact the nature of those properties' values. He said the special conditions of the lot includes that it is a very large lot and the business is in the G1 district, which is about one-third of the lot, but the remaining 2/3 of the lot is in the SRB zone where the driveway goes through, and the address is not actually the road the driveway is on. He said the request was reasonable compared to what the applicant could have asked for if it was zoned G1. He said it was still well below the total amount of signage required. Ms. Record concurred and had nothing to add.

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

C. REQUEST TO POSTPONE The request of **Millport INC (Owner)**, for property located at **1001 Islington Street** whereas relief is needed for a change of use to extend the existing health club into the adjacent unit wherein relief is required from the Zoning Ordinance including the following special exception from Section 10.440, Use #4.42 to allow a health club greater than 2,000 s.f. of gross floor area. Said property is located on Assessor Map 172 Lot 4 and lies within the Character District 4-W (CD4-W). **REQUEST TO POSTPONE (LU-24-209)**

DECISION OF THE BOARD

*The petition was **postponed** to the February 19 meeting.*

- D.** The request of **Custom House LLC, (Owner)**, for property located at **40 Pleasant Street** whereas relief is needed to install a projecting sign which requires the following: 1) Variance from Section 10.1251.20 for a 20 square foot projecting sign where 12 square feet is the maximum allowed. Said property is located on Assessor Map 107 Lot 81 and lies within the Character District 5 (CD5), Historic and Downtown Overlay Districts. (LU-24-206)

SPEAKING TO THE PETITION

[Timestamp 2:45:30] Dan Harmer of 40 Pleasant Street was present. He said the restaurant Howling Wolf Taqueria took over the previous Book and Bar location and he thought it would be best to keep the same dimensions and bracket of the former sign and just swap the hardware. He said he then discovered that the previous Book and Bar sign was nonconforming. He reviewed the criteria and said they would be met.

The Board had no questions. Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

[Timestamp 2:49:14] Eric Holstein, owner of Howling Wolf Taqueria, said he tried to have the current sign painted but it was falling apart. He said it was best to remake the sign in the same dimensions and use the existing hardware.

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

DECISION OF THE BOARD

*Mr. Mattson moved to **grant** the variance as presented, seconded by Vice-Chair Margeson.*

[Timestamp 2:52:00] Mr. Mattson said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said the proposed use would not conflict with the purpose of the ordinance because the sign is a business sign advertising that business and will have the same dimensions as the previous sign. He noted that the applicant even tried to keep the same sign. He said signage was allowed to advertise the business and altering the writing and logo would not alter the essential character of the neighborhood nor threaten the public's health, safety or welfare. He said the sign was high enough and out of the way and safely secured to the wall. He said granting the variance would do substantial justice because there was no reason to think that the change in the sign would harm the general public, and it could be a benefit to the applicant to approve it. He said granting the variance would not diminish the values of surrounding properties, noting that there was no testimony saying that would be the case and there was no reason that it would be because the sign would be a similar use to what was there before. He said literal enforcement of the ordinance would result in unnecessary hardship and there would be no fair and substantial relationship between the general purpose of the ordinance provision and the specific application to the property. He said the intent was not to have an overly large sign that would impose on the public or distract drivers. He said the property already had a sign of the same

dimensions and location that was not in violation until recently discovering that it was not in conformance. He said the new sign would be consistent and the proposed use is a reasonable one, replacing the existing sign in the same dimensions and location. Vice-Chair Margeson concurred and noted that the building was a priceless one in downtown Portsmouth and the less it was impacted, the better.

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

III. ADJOURNMENT

The meeting adjourned at 9:52 p.m.

Submitted,

Joann Breault
BOA Recording Secretary