

**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 28, 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: Stefanie Casella, Planning Department

Chair Eldridge called the meeting to order at 7:00 p.m. Alternate Jody Record took a voting seat for the evening.

I. PUBLIC HEARINGS - NEW BUSINESS

Mr. Mattson recused himself from is voting seat for the next petition because he was the applicant.

- A.** The request of **Michele Kathryn Arbour** and **Jeffrey M. Mattson (Owners)**, for property located at **86 Emery Street** whereas relief is needed to construct a firewood shed which requires the following: 1) Variance from Section 10.571 to allow an accessory structure to be located closer to the street than the primary structure. Said property is located on Assessor Map 220 Lot 87-1 and lies within the Single Residence B District (SRB) (LU-24-215)

SPEAKING TO THE PETITION

[Timestamp 6:37] The owner/applicant Jeffrey Mattson was present to review the petition. He said the firewood shed would be closer to Myrtle Avenue, which is a secondary frontage, and an accessory building was not allowed to be closer to a street than the principal building. He noted the shed's dimensions and setbacks. He reviewed the criteria and said the hardship was that the property was burdened by the zoning restriction because of the secondary building being closer to the street. He said the use of a firewood shed next to a fire pit patio would be a reasonable one.

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

[Timestamp 12:50] Mr. Nies said the lot had a strange shape, and the secondary front yard was a very small part of the lot that abuts Myrtle Avenue. He said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance, and it would not affect the health, safety, and welfare of the neighborhood nor would it affect light and air. He said the shed structure was very low and complied with all height requirements. He said the ordinance is designed in part to prevent clutter in front of buildings, and even though the yard was a secondary front one, it was not really in front of the building but was on the side. He said he could not see any benefit to the public by denying the variance, and the applicant would have a less useful firepit if denied, so granting the variance would do substantial justice. He said there was no evidence that there would be any effect on surrounding property values because the structure was a small one for storage of firewood and on a large lot. He said the hardship was the lot's special conditions of having an unusual shape and a very short frontage along the street, technically giving it a secondary front yard. He said the main building is close to 100 feet from the street and the proposed structure is 75 feet away and on the side of the building and would be almost unnoticeable from Myrtle Street. He said because of the special conditions of the property, there did not appear to be a fair and substantial relationship between the purpose of the ordinance as specifically applied to the property and the request. Mr. Mannle concurred and had nothing to add.

*The motion **passed** unanimously by a vote of 6-0, with Mr. Mattson recused.*

Mr. Mattson returned to his voting seat and Mr. Record recused herself from the following petition.

- B.** The request of **909 West End LLC (Owner)**, for property located at **909 Islington Street** whereas relief is needed to allow a restaurant which requires the following: 1) Special Exception from Section 10.440, Use # 9.42 to allow a Restaurant with an occupant load from 50 to 250 people where it is allowed by Special Exception. Said property is located on Assessor Map 172 Lot 7 and lies within the Character District 4-W (CD4-W). (LU-24-221)

SPEAKING TO THE PETITION

[Timestamp 16:06] Meghan Boland of Chinburg Builders representing the applicant was present and reviewed the petition. She said they had a tenant for a 3,000-sf vacant space in the building. She reviewed the existing and proposed elevations for the new restaurant called Louie's. She reviewed the special exception criteria and said they would be met.

[Timestamp 18:11] Vice-Chair Margeson asked if the occupancy load of the restaurant at 127 people would include the outdoor seating. Evan Mullen, principal architect from Portland Architects, was present on behalf of the tenant and said the proposed outdoor seating was mostly conceptual and the first step was to get the special exception. He said there would be 119 occupants

for the interior and eight for the exterior. Vice-Chair Margeson asked Ms. Casella if the outdoor dining was part of the application. Ms. Casella said the outdoor dining would be a Conditional Use Permit (CUP) in that district. Ms. Boland said the outdoor dining was conceptual and should have been excluded from the plan. Mr. Mullen said the impetus for the hearing was the building permit submission and that they wanted to indicate on the life safety plan the potential number of occupants on the high end that they could accommodate.

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 special exception for the petition as presented and advertised, seconded by Mr. Mattson.*

[Timestamp 22:30] Mr. Rheume said it was a straightforward application in terms of the proposed use. He said the standards as provided by the ordinance for the particular use is permitted by special exception for CD-4W and that the applicant demonstrated that their internal and likely external occupancy load would be well within the 50-250 person limit. He said no hazard would be posed to the public or adjacent properties on account of potential fire, explosion, or release of toxic materials. He said there was nothing about the restaurant use especially in that quasi-industrial/commercial zone that would present an unusual hazard to the public related to any of those concerns. He said there would be no detriment to property values in the vicinity or change in the essential characteristics of the area's residential neighborhoods and business and industrial districts, including structures, parking areas, accessways, odor, smoke, gas, dust, pollutant, noise, heat, vibration, and unsightly outdoor storage of equipment or vehicles. He said there was nothing to indicate that it would be a concern because most of the restaurant use would be internal to the modest space it would occupy. He said the district was a combination of residential and commercial/light industrial uses, so there would be no creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity. He noted that there had been numerous buildings in the area before and since, and there was nothing to indicate that the restaurant use would be more intensive than other uses in the area that would result in an unusual amount of traffic. He said the area saw a decent amount of residential traffic as well as commercial and industrial traffic. He said there would be no excessive demand on municipal services including but not limited to water, sewer, waste disposal, police and fire protection, and schools. He said it was a restaurant use and would need some of those, but a restaurant use did not have excessive demands on any of those services. He said there would be no significant increase of stormwater runoff onto adjacent properties or streets, noting that the area had been already built out and there was no new construction. He said the use would be in a highly paved area and that no impervious surfaces would be made pervious. He said the petition met all the criteria for the special exception.

Mr. Mattson concurred. He said surrounding the outside of the structure was still all part of the parcel and private property, which was set back quite a ways from the actual public right of way, which was a benefit. He said a restaurant in the building would be a nice addition to the West End.

*The motion **passed** unanimously by a vote of 6-0, with Ms. Record recused.*

Ms. Record returned to her voting seat.

C. The request of **Gary B. Dodds Revocable Trust (Owner)**, for property located at **294 Lincoln Avenue** whereas relief is needed to demolish the two existing detached garages and construct a new attached garage which requires the following: 1) Variance from Section 10.521 to allow 28% building coverage where 25% is the maximum allowed. Said property is located on Assessor Map 130 Lot 24 and lies within the General Residence A (GRA) District. (LU-24-225)

SPEAKING TO THE PETITION

[Timestamp 27:54] The owner Gary Dodds was present to review the petition. He said one of the two existing garages was in disrepair and the other one was a temporary shed for storage, and he proposed demolishing both for the new garage. He said there would be a bigger setback and more room for someone to back out of the garage. He reviewed the criteria and said they would be met. He said a few letters of approval from the neighbors were submitted.

[Timestamp 38:50] Vice-Chair Margeson referred to Note 10 on the site plan that indicated that a variance is required from Section 10.1114.32 to allow vehicles to back into a public street. She said the applicant said that on the fourth garage bay, people would back out in a little turnaround and then go out to the street front. Mr. Dodds agreed and said people would not back out onto Miller Avenue, which was one of the reasons he pushed everything forward. Vice-Chair Margeson said the structure was a new one that was more than just the replacement of a garage because it had office space above and storage space. She asked who would use the office space. Mr. Dodds said he would and that he lived there. Vice-Chair Margeson said the trust was on Sagamore Road. Mr. Dodds said that was an error. Vice-Chair Margeson said it was a 3-family apartment building, with the three smaller garages being accessed off Lincoln Avenue and the larger garage being accessed off Miller Avenue by the turnaround. She said why the fourth garage was much larger than the others. Mr. Dodds said it was because it could not be accessed from inside the house due to a staircase that went along the side. He said the office area above it also made it bigger and was not living space. Vice-Chair Margeson said the office space had enough square footage that it could be converted to an ADU in the future. Ms. Casella said ADUs were not allowed with multi-family buildings.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chair Eldridge closed the public hearing. Ms. Casella said there was a person on Zoom with a comment and asked that the public hearing be re-opened.

Vice-Chair Margeson moved to re-open the public hearing, seconded by Mr. Nies.

Erica Wygonik (no address given) said she lived down the street and thought it was a great project with the potential to clean things up, but it seemed big. She said the fourth bay seemed like a double garage, so it looked like a total of five garage spaces. She asked what the hardship was.

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

DISCUSSION OF THE BOARD

[Timestamp 45:47] Vice-Chair Margeson said she would not support the application because she thought it was not merely a garage but was four garages with office space and storage space on top. She said it took it out of the accessory use designation and she wasn't sure how the office related an accessory use to the principal use. She said it was the GRA District but thought the garage with four bays and the office and storage spaces seemed like more of a complex and less of a residential use. She said the requested variance was minor but thought the project as presented and advertised would threaten the general character of the area. She said she rode around the area and did not see anything similar to the applicant's proposal, and she noted that it would be seen from Lincoln and Miller Avenues. Mr. Rheume agreed that it was more than just a garage and perhaps should not have been presented the way it was, but he said it had to be compared against what was being asked for in terms of relief. He said the applicant was asking for three percent over the total lot coverage requirement, which was less than 300 square feet, so by right he could build the majority of what was proposed. He said it was really an extension of the house. He noted that a home office was common now. He said the rest of the space was storage that did not lend itself to a residential use. He said four units were allowed in the zone as a special exception and noted that the current three units were grandfathered in. He said the applicant was allowed to have four parking spots that could be outdoor ones but chose to make them indoor, which would be a positive benefit for rentals. He said it came down to what was being asked for relief and that the applicant as allowed to do all the things he proposed except for the additional 300 square feet, and a portion of it was a one-story structure. He said it should be allowed in terms of what was being asked for relief. Mr. Nies asked if the use of the home occupation applied to an office built separate from the home. Ms. Casella said if the applicant had decided to create an address for a business, that would be considered a home occupation, but what the applicant presented to the Board did not constitute a home occupation. She said a tenant fit-up building permit would be required for a home occupation because a certain percentage of the main floor would be required.

DECISION OF THE BOARD

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

Ms. Casella asked that a condition be added to remove Note 10 from the site plan that said a variance is required for backing out of the garage space. She said it was not advertised and the applicant said he did not intend to back out. Mr. Rheume and Mr. Mattson agreed.

The **amended** motion was:

*Mr. Rheume moved to **grant** the variance for the petition as presented and advertised, with the following **condition**:*

Note 10 from the site plan stating a “variance from Section 10.1114.32 (b) is required to exit parking by backing into or from a public street,” shall be removed.

Mr. Mattson seconded the motion.

[Timestamp 52:25] Mr. Rheume said the relief asked for was small and there were many other homes in the area that had big additions put on for multiple purposes. He said the applicant's one was centered around the garage use on the first floor and had some additional uses on the second. He said an office is not a business and not considered a home occupation. He said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said the Board was trying to not put an excessive number of very large amounts of additional structure on it. He said the applicant is allowed to have most of this and that the section added on is relatively modest. He said even with the height associated with some of the major section of the garage, it would not unduly impact the neighboring properties for light and air. He said substantial justice would be done because there was nothing with the nature of the relief asked for that the general public has a greater benefit than the applicant would. He said the values of surrounding properties would not be diminished, noting that the one of the current garages was dilapidated and the other was temporary. He said the new garage would look like a continuation of the well-designed house. He said the hardship was that the applicant had a somewhat larger lot that gave it more room on either side, with a continuous drive around it that created the two curb cuts. He said the garages would be positioned so that it is possible for people to back out within the property. He said a small amount of relief was being asked for and that the use is a reasonable one. Mr. Mattson concurred and said it is not a single-family home but a 3-unit structure that is already on the property. He said it made more sense to have multiple garage bays and that it would be an added desirability for living in New England winters and an improvement of what was there.

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

D. The request of **Treadwell LLC (Owner)**, for property located at **93 Pleasant Street** whereas relief is needed to permit the provision of required parking spaces to be located on a separate lot in the same ownership within 300 feet of the property line of the lot in question, which requires the following: 1) Special Exception from Section 10.1113.112 to allow five (5) of the required parking spaces to be located at 134 Pleasant Street, Map 116, Lot 30. Said property is located on Assessor Map 107 Lot 74 and lies within the Character District 4 (CD4), Historic and Downtown Overlay Districts. (LU-24-216)

SPEAKING TO THE PETITION

[Timestamp 59:12] Attorney F. X. Bruton was present on behalf of the applicant, along with principle Marie Bodi and architect Tracy Kozak. Attorney Bruton reviewed the petition and said the Treadwell Inn had 20 spaces on site and would utilize five spaces from the Citizen Bank parking lot that were currently underutilized. He said they wanted to add signage for the hotel patrons and designate the spaces across from the front door of the bank closest to the road. He said it would

satisfy the criteria because it was within 300 feet of the property line. He reviewed the criteria for special exception and said they would be met.

[Timestamp 1:04:30] Mr. Rheume said the Staff Report had information about parking requirements at the Treadwell Mansion property, and he asked if Attorney Bruton knew what the parking requirement was for that particular parcel per the zoning ordinance and what they currently had for parking spaces and whether they had the extra five spaces to give up. Attorney Bruton said they had 33 spaces and currently five spaces for the Treadwell Inn's exclusive use. Ms. Kozak said zero commercial banks require zero parking in the downtown. Mr. Rheume said the packet indicated that to memorialize the use of the five spaces, a licensed agreement was proposed and that the applicant also provided a copy of one for a similar hotel on Middle Street. He asked if that relationship between a particular hotel and the related property was done by special exception by the Board. Attorney Bruton said it was done at the Planning Board level as part of the approval process and that there was common ownership. Mr. Rheume said his concern was that the special exception is granted for the life of the property and he asked how the Board made sure when they memorialized the relationship that it had a similar level of perpetuity and how a license agreement would meet that as opposed to an easement. Attorney Bruton said they utilized the form that the City typically would use for that arrangement and that the wording was approved by the Legal Department. He said the easement issue was a little trickier legally. Ms. Casella said she did recommend a condition that the Planning Board and Legal Department have final review on whatever agreement is drafted. She said the Treadwell Mansion is in the DOD but the bank lot is not. Mr. Rheume asked if the zero parking requirement was related to the DOD. Attorney Bruton said he believed it was. Vice-Chair Margeson said the parking lot license agreement provided as an example is registered, which would deal with some of the perpetuity issues, but she asked if the license agreement would survive if the two entities fell out of common ownership. She said she would assume that the special exception would expire if there was no more common ownership, so she thought the Treadwell Mansion would not be able to park five cars at the bank. Attorney Bruton said Article 5 granted the license for a nonrevocable royalty-free license, so that would ease the concern about easement because the license could be revokable and the document is non-revokable. Vice-Chair Margeson said it may complicate the special exception if granted because it is no longer a common ownership. Attorney Bruton said the rules allowed for it.

[Timestamp 1:14:11] Ms. Casella said the bank is in the CD-4 District, and under Section 10.5A44.21, "uses in the character district that are not located in the DOD district shall provide off-street parking in accordance with Section 10.1112". She said she believed that was the typical parking requirement table, which would be based on use. Mr. Rheume said he was fine with 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

*Vice-Chair Margeson moved to **grant** the special exception for the petition with the following condition:*

- *The final parking agreement will be submitted to the Planning and Legal Department for review and approval.*

Mr. Mattson seconded.

[Timestamp 1:15:45] Vice-Chair Margeson said Section 10.233.21, standards as provided by the ordinance for the parking use permitted by special exception, and Article 10.1113.112 permits the granting of a special exception for the provision if required parking on another lot in the same ownership is within 300 feet of the property line of the lot in question. She said the requirement was satisfied. Referring to Section 10.322.22, she said granting the special exception would pose no hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials. She said there was the provision of having five cars parked in a lot across the street, so there would be none of that. Referring to Section 10.322.23, she said there would be no detriment to property values in the vicinity or a change in the essential characteristics of any area including residential neighborhoods or business and industrial districts on account of the location and scale of buildings or other structures, parking areas, accessways, odor, smoke, gas, pollution, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials. She said the provision of having five parking spaces at the Citizens Bank property did not touch on any of those areas. Referring to Section 10.233.24, she said the project would pose no creation of a traffic safety hazard or substantial increase in the level of traffic in the vicinity. She said it was a very minor request of five parking spots in an area that had a municipal parking lot with significant traffic going around it. She said the movement of five cars in one day would not really impinge on it and the people who parked in those spaces would be walking to the hotel. Referring to Section 10.233.25, she said there would be no excessive demand on municipal services including but not limited to water, sewer, waste disposal, police and fire protection, and schools. Referring to Section 10.233.26, she said there would be no increase of stormwater runoff onto adjacent properties or streets, noting that there was nothing about parking that would increase stormwater runoff. She said the parking lot was already built. She said there was a condition that the Planning Department wanted, which was that the final parking agreement would be submitted to the Planning and Legal Departments for review and approval.

Mr. Mattson concurred and said he was glad the ordinance had the provision because he thought a lot of the most desirable parts of downtown were created before parking, and a lot of what is desired would not be allowed now due to the parking requirements. Mr. Rheume said he was willing to go forward. He asked if the motion maker would consider another condition that there be adequate parking remaining at the alternate lot to meet the requirements of the current use. Vice-Chair Margeson and Mr. Mattson agreed.

The **amended** motion was:

*Vice-Chair Margeson moved to **grant** the special exception for the petition with the following conditions:*

1. *The final parking agreement will be submitted to the Planning and Legal Department for review and approval, and*

2. *There is adequate parking remaining on the alternate lot per the requirements of the use, to be determined by Planning Staff.*

Mr. Mattson seconded.

Mr. Nies pointed out that the property card showed the building as 30,000 sf of gross floor area and 16,000 sf feet of living area. He said it was larger than a 10,000 sf building but thought the added condition was a good one. Vice-Chair Margeson said she believed the parking calculation was made by the usable square area and not the gross area.

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

Mr. Rheame recused himself from the following petition.

- E. The request of **Martin Husslage (Owner)**, for property located at **48 Langdon Street** whereas relief is needed to demolish the existing dwelling and accessory structure, subdivide the property from one lot into two and to construct a single-family structure with attached Accessory Dwelling Unit on one lot and a two-family attached dwelling on the second lot. The project requires the following: 1) Variance from Section 10.521 to allow 2,832 square feet per dwelling unit for the proposed two-family dwelling lot where 3,500 square feet per dwelling unit is required. Said property is located on Assessor Map 138 Lot 47 and lies within the General Residence C (GRC) District. (LU-24-227)

SPEAKING TO THE PETITION

[Timestamp 1:24:27] Attorney Tim Phoenix was present on behalf of the applicant, along with the applicant Martin Husslage and Corey Caldwell of TF Moran. Attorney Phoenix said the project went through many iterations and that they wanted to demolish the existing dwelling and accessory structure in favor of a 2-lot subdivision with a single-family home and an ADU on one lot and a duplex on the other lot. He explained that they had 94-1/2 percent of the total needed for the three dwelling units. He reviewed the proposed conditions and noted that the tax map had 28 lots less than or equal to 3500 square feet, so more than 45 percent of the lots on the tax map did not meet the lot area or the lot area per dwelling unit requirements. He said their memo identified several lots that were fairly close. He reviewed the criteria. He said there was a letter of opposition from the owner of 43 Cornwall Street, whose points he thought were inapplicable. He said that owner lived behind the applicant's property and had a 6-unit building on a .193 acre lot, which translated to 1,401sf of lot area per dwelling unit.

[Timestamp 1:41:21] Mr. Nies said the properties Attorney Phoenix highlighted and showed the Board and said were all in the same zone were really not in the same zone because the properties along Islington Street and some properties to the east of Rock Street were not. Attorney Phoenix said his point was the properties in the general area. Mr. Nies said the applicant provided a list of nearby properties that included mostly the properties on Langdon Street, and many of them exceeded the residential unit to lot area requirement, but he said Attorney Phoenix referenced the Walker vs. the City of Manchester case in which a number of variances were given in the same area. He asked how many of those properties were given variances. Attorney Phoenix said that

many if not most of the lots and buildings preceded zoning, but his point was that the project fit in with the area as it exists today. Mr. Nies said he was not convinced that the cited case was completely relevant because of the language in that case. He said the applicant's letter also cited other properties, and he asked how Attorney Phoenix reconciled his comment about the surrounding properties with Zoning Ordinance 10.233.50 that stated "whether surrounding properties violate a provision or standard shall not be a factor in determining whether the spirit of the ordinance shall be observed". Attorney Phoenix said he thought that section was overstated and believed that someone should give consideration to whether the property fits in with what's around it. He said it did fit in. Mr. Mattson asked if the applicant considered subdividing and having two single-family homes, each with an ADU, so that no variance would be required. Attorney Phoenix said they did consider it but the owner preferred to have both the value and size of the duplex for his own purposes, whether he kept or sold it. He said the project fit into the neighborhood.

[Timestamp 1:44:54] Vice-Chair Margeson said it was not a matter of whether or not it fit in, it was whether or not there are special conditions of that land that really merit a variance from the application of the ordinance to the land. She asked what the hardship was for not putting a single-family house on Lot A with perhaps an ADU. Attorney Phoenix said the hardship was that the lot was large compared to most of the lots nearby, so the fact that it is a large lot that will allow the division of the lot. He said when all the other requirements of the variance were factored in, they believed it met the hardship. Vice-Chair Margeson said she went through the area and it seemed like there was only one other house on the street that was a duplex and a teardown and that all the houses seemed to be the same age. She said all the difficult conditions of the property were things that could be easily addressed. Attorney Phoenix they were trying to balance the fact that they were at a corner where there was a fair amount of traffic and the driveway is close to that corner, so if they moved the home, they would need side yard setbacks. He said it was pretty close and that to deny the owner on a technicality that he did not quite meet 3500 square feet was not fair. Vice-Chair said the Lot A variance request was driven by the fact that there is a duplex on that lot and has nothing to do with the subdivision. She said the 3500 square feet minimum was not arbitrary. Attorney Phoenix said his point was that just because it was 3500 square feet did not mean that the Board could not reasonably approve something less than that under all the circumstances that the applicant argued, including more housing stock. Mr. Nies said the applicant was creating a hardship by splitting the property into two lots. Attorney Phoenix said the lot is larger than many of the others and the lot area and lot area per dwelling unit fit into the neighborhood.

Chair Eldridge opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

[Timestamp 1:52:09] Corey Caldwell said when the project team looked at the balance test of the application, they looked at the five existing nonconformities, which he named. He said they would remove the five nonconformities in exchange for one, and in doing so would be able to preserve more open space for the two lots than for the existing one lot.

SPEAKING IN OPPOSITION TO THE PETITION

Tom Waterman of 43 Cornwall Street said the applicant's property was a large rectangular lot and that he had always known that it would be developed because it was big, but the plan to create four dwelling units seemed excessive. He said if the applicant's goal was to have more rental income, he could just add another single-family house and an ADU and have four rental units. He said he could request a variance to add an ADU to an existing rebuilt duplex on the same property without subdividing. He said the Board heard a similar case in 2019 at 41 Salem Street, where they tried to fit two large duplexes on that large piece of property, and it was denied. He said 41 Salem Street now had three single-family homes there. He said he did not feel that the applicant demonstrated a hardship for asking for a 19 percent less-than-required lot size.

Attorney Phoenix said the applicant's proposal was different than the 41 Salem Street project because it was not two large duplexes. He said they would also remove the current violations.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DISCUSSION OF THE BOARD

[Timestamp 1:57:40] Chair Eldridge said she struggled with the application because she felt that the Board could accept that it was compliant at 94.5 percent and that the building itself fit on the lot, but she was also persuaded by Mr. Nies' argument that the applicant created the subdivision and was now asking the Board to forgive him for making it somewhat unbuildable. Mr. Mannle said the applicant clearly created the hardship for the Board, noting that the applicant could have drawn the lot line and had plenty of room with no variance needed for a two-family dwelling on one lot and single-family dwelling on the other lot. He said all the things that the applicant said would be cleaned up would have been taken care of by that. He said the applicant kept switching from 80 percent to 94 percent, but it was 80 percent. He said he did not see the hardship and thought the applicant was trying to backdoor a four-family by throwing in an ADU, which was why they were playing with the lot lines. It was further discussed. Mr. Mattson said he had no problem with subdividing the lot but did with the issue that was created upon subdivision to put the two units on. He said it was not a huge risk but was being created as part of the subdivision. He said the most convincing thing he found was removing the five nonconformities, but he asked why the applicant would create a nonconformity if he was starting fresh.

DECISION OF THE BOARD

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

Vice-Chair Margeson said the applicant is subdividing a lot that is oversized for this district, but the reality is that they have not demonstrated hardship. She said it failed on Section 10.233.25, "The enforcement of the provision of the ordinance will result in an unnecessary hardship. The property has special conditions that distinguish it from other properties in the area, and owing to those special conditions, a fair and substantial relationship does not exist between the general public

purposes of the ordinance provision and the specific application of that provision to the property, and the proposed use is a reasonable one.” Vice-Chair Margeson said the lot area was 3500 square feet minimum and the applicant would not need a variance if he built a single-family home on Lot A. She said the Board’s purview was to see whether there is a hardship, and she said the applicant did not demonstrate that he could not build a single-family on Lot A and therefore would not need a variance for the lot area. For those reasons, she said the application should be denied. Mr. Mannle concurred and had nothing to add. Mr. Mattson said the special conditions that distinguished the property from others in the area was not that it was similar to other properties in the area. He said the applicant presented it as a justification for the hardship that there were other similar properties in the area. Mr. Nies said he struggled because of the hardship criteria. He said many of the special conditions that the applicant talked about were resolved by splitting it into two properties. He said he was trying to figure out the special condition that justifies the variance requested, and the only thing he could come up with was that the property is slightly smaller than what is required under the ordinance for a duplex for two residences, and he said that is not significantly different than any other property in the area.

*The motion **passed** unanimously, 6-0, with Mr. Rheume recused.*

II. ADJOURNMENT

The meeting adjourned at 9:06 p.m.

Submitted,

Joann Breault
BOA Meeting Minutes Taker