

**MINUTES OF THE  
BOARD OF ADJUSTMENT MEETING  
CONFERENCE ROOM A  
MUNICIPAL COMPLEX, 1 JUNKINS AVENUE  
PORTSMOUTH, NEW HAMPSHIRE**

**7:00 P.M.**

**June 27, 2023**

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

**MEMBERS EXCUSED:** ML Geffert, Alternate; Thomas Rossi

**ALSO PRESENT:** Jillian Harris, Planning Department

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

**I. NEW BUSINESS**

- A.** The request of **JJCM Realty LLC** and **Topnotch Properties (Owners)** for property located at **232 South Street** whereas relief is needed to construct a 12' x 20' garage which requires the following: 1) A Variance from Section 10.521 to a) permit a building coverage of 26% where 20% is permitted, and b) permit a side setback of 1.5 feet where 10 feet is required; and 2) A Variance from Section 10.571 to permit an accessory structure in the front yard. Said property is located on Assessor Map 111 Lot 2 and lies within the Single Residence B (SRB) and Historic District. (LU-23-80)

**SPEAKING TO THE PETITION**

The applicant/owner Gary Beaulieu of Bedford NH was present with realtor broker Matt Beaulieu and reviewed the petition. He said the garage would be the same color, texture, trim and roof pitch of the existing house. He reviewed the criteria and said they would be met.

In response to Vice Chair Margeson's questions, Mr. Beaulieu said the back part of the lot was owned in common between the two units. He said he could not push the garage back so that it was equal with the neighbor's because the neighbors went to the Conservation Commission to get their office/garage and that it would ruin the backyard. He said the wetlands weren't on the property and the back of the decks were about three feet over the wetland setback, which was why they got relief from the Conservation Commission. He said they were just outside of the buffer.

Mr. Rheame asked who owned each of the units. Mr. Beaulieu said he did, as the developer and condo association. Mr. Rheame asked what piece of water the applicant was within 100 feet of.

Mr. Beaulieu said it was a Type B soil and that the stakes in his yard were put in by the City. Mr. Rheume asked why the applicant didn't ask for the variance relief back in 2021 when he was granted a variance to expand his building coverage to 23 percent. Mr. Beaulieu said he assumed it was a done design from a young developer who was going bankrupt, so he ran with what was approved. He said the garage proposal was due to public sentiment. Mr. Rheume asked why the other condo wasn't getting a garage and when he would return for that. Mr. Beaulieu said he probably wouldn't because it would be a zero lot line. He said he didn't feel it was practical and would crowd the neighbor. Mr. Rheume asked what objection the Historic District Commission (HDC) had to the historical architecture. Mr. Beaulieu said the HDC wanted a final draft of what would be done with the driveway and that he would return to the HDC for the garage door approval. Mr. Rheume asked about the accessory structure in the front yard. Mr. Beaulieu said he met with the Planning Department and they took the common frontage distance of the surrounding homes. Ms. Harris said it was for the accessory structure located within the front yard and not necessarily the setback. Mr. Rheume said the applicant claimed that most of the neighbors had garages and asked if the applicant had a list of the properties he identified. Mr. Beaulieu said there were garages on both sides of him and across the street and but that he didn't have specific locations for the others in the neighborhood.

Realtor broker Matt Beaulieu said the garage component was crucial, noting that the neighbors had the same setback requirements and some had recent garages.

Chair Eldridge opened the public hearing.

#### **SPEAKING IN FAVOR OF THE PETITION**

No one spoke.

#### **SPEAKING IN OPPOSITION TO THE PETITION**

Christina Logan and Michael Graf of 220 South Street said were the most affected abutters. Mr. Graf said the adjacent building was Ms. Logan's studio. He said the applicant's location was too close to the street and to his property line. He said he talked to the applicant about moving the building back but the applicant said he didn't want to go to the Conservation Commission for relief. He said he told the applicant there was a precedent because he and Ms. Logan had gotten relief. He said the applicant just wanted to do what they could to sell it. He clarified that there weren't that many garages in the neighborhood, but the ones that were couldn't be seen from South Street.

Laurie Kennedy of 244 South Street said she went before three land boards for her 2-car garage and that it could not be seen from the road. She said the applicant was very close to the lot line and if they sold it as two units, there wasn't enough room for two cars. Chair Eldridge asked Ms. Kennedy if she shared a driveway with the applicant. Ms. Kennedy said she had to get a variance for her 1-1/2' driveway. Mr. Rheume verified that there was an agreement recorded at the Registry of Deeds that indicated Ms. Kennedy had a 1-1/2 ft right-of-way.

#### **SPEAKING TO, FOR, OR AGAINST THE PETITION**

Realtor Matt Beaulieu said they were getting a lot of interest in the property and most people wanted a garage. He said he had done a lot of projects in Portsmouth.

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

### **DISCUSSION OF THE BOARD**

Mr. Mattson said it was odd that there was only one garage proposed but felt that it wasn't something he couldn't get on board with. He noted, however, that the applicant had already been before the Board the past few years. He said he was on the fence about whether there was an actual hardship. Vice-Chair Margeson said she was conflicted also, noting that a garage is an appropriate and allowed use for a residential building, but she took the comments about the desire not to go before the Conservation Commission seriously. She said bringing a building completely out of the wetlands buffer was also a good thing. She said she had concerns about the applicant coming back two years later and the lot on Unit 2. Mr. Rheume said the applicant was asking for a modest 12'x20' garage but were adding in the additional relief because it was in the front yard, which he understood. He said he was conflicted about the allowable space standpoint that drove the garage and thought 1-1/2 feet was very tight. He said the hardship was more of an economic one. He said the properties around the applicant had variations of garages but that he found very few garages in the overall neighborhood. He said he understood the economic desire but thought the garage was too close to the property line and wasn't enough to meet the criteria. Chair Eldridge said she could not approve the project. She said she understood that the lots were narrow and it was hard not to build too close to a lot line in the south end, but she thought the applicant's statement of not wanting to go before the Conservation Commission wasn't really a hardship. She said that relief should be sought there before asking the Board for relief.

### **DECISION OF THE BOARD**

*Mr. Rheume moved to **deny** the petition, seconded by Mr. Mannle.*

Mr. Rheume said the applicant had to meet all the variance criteria and that it failed two. He said it was contrary to the public interest due to the garage and its location and that the applicant provided no evidence specific to other properties that his proposal would have a similar look and feel. He said the positioning of the garage requires additional relief from the front yard requirement, which could be alleviated by repositioning it on the lot. He said the applicant brought up some economic hardships associated with the property. He said it was just part of living in the south end and he didn't hear anything related to unique characteristics of the property. He said it sounded like the applicant's property was in the 100-ft buffer and there was a potential leniency that other neighbors had gotten in the past and were able to build in another location. He said moving it would provide further setback from the property and eliminate the need for the front yard variance request.

Mr. Mannle concurred. He said he didn't see the hardship and that there was no obligation to get a garage. He said he found it odd that it was a two-family property and the proposal was only for a single-car garage, and he suspected that the applicant would be back.

*The motion passed unanimously, 6-0.*

- B.** The request of **Sarnia Properties Inc. C/O CP Management Inc. (Owners)**, for property located at **933 US Route 1 BYP** whereas a Special Exception is needed to allow a health club greater than 2,000 square feet GFA which requires the following: 1) Special Exception from Section 10.440, Use #4.42 to allow a health club where the use is permitted by Special Exception. Said property is located on Assessor Map 142 Lot 37 and lies within the Business and Highway Noise Overlay District. (LU-23-76)

### **SPEAKING TO THE PETITION**

Attorney John Bosen was present on behalf of the applicant, with the owner of the Vanguard Health Club Craig Annis. Attorney Bosen said the plan was to relocate the Raines Avenue gym. He reviewed the petition and the reasons why a special exception was needed.

Mr. Rheume asked what portion of the building the applicant would use. Mr. Annis pointed it out on the plan and said it would have a shared loading dock. Mr. Rheume asked if the mezzanine, steel gate and one floor were part of the application. Mr. Annis said they were but would be cut off at some point and would just be a warehouse space to sub out. Mr. Rheume said the applicant was applying for a parking Conditional Use Permit (CUP) and asked what the parking situation and the status with the Planning Board was. Attorney Bosen said 83 spots were available and the ordinance required 114, so they had a favorable meeting with the Technical Advisory Commission (TAC) and thought they would receive approval from the Planning Board in July. He said there was more than adequate parking, noting that the busiest times the gym was used were between 4 and 7 a.m. Mr. Rheume asked what the entry points to Unit 5 were. Mr. Annis said it was off Emery Street and that most of the clientele would be entering on that side. Mr. Rheume asked what drove the 114 parking spaces and who the other current building tenants were. Attorney Bosen said there were three office spaces, storage and warehouse space, and a small gym.

Chair Eldridge opened the public hearing.

### **SPEAKING TO, FOR, OR AGAINST THE PETITION**

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

### **DECISION OF THE BOARD**

*Mr. Mattson moved to grant the special exception, seconded by Ms. Record.*

Mr. Mattson said the standards as provided by the ordinance for the particular use of the health club were permitted by special exception. He said granting the special exception would pose no hazard to the public or adjacent properties on account of potential fire, explosion, or release of toxic materials because that wasn't a concern for a health club and there would be no external changes. He said it would pose no detriment to property values in the vicinity or change to the essential characteristics of any area, including residential neighborhoods and businesses or industrial districts on account of the location and scale of buildings and other structures, parking area, accessways, gas, dust, noise, pollution, and so on. He said it would not be a problem because there would be no external changes. He said it would not create a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity because it would be in a location that would have almost twice the parking than the previous location and would have off-peak hours for traffic. He also noted that TAC approved it. He said it would pose no excessive demand on municipal services including but not limited to water, sewer, waste disposal, police and fire protection, schools and so on because that should not be a problem for a health club, which was allowed by special exception. He said it would pose no increase of stormwater on adjacent properties or streets because there were no external changes. Ms. Record concurred and had nothing to add.

Mr. Rheame said he would support the motion because the applicant made a good argument that their parking needs were out of synchronicity with the other needs for the other uses within the building, and that heavy traffic and parking needs would be outside the times that those other users would be looking for the same types of capabilities.

*The motion passed unanimously, 6-0.*

- C. The request of **Ashley J Brown and Lisa F Brown Living Trust (Owners)**, for property located at **176 Orchard Street** whereas relief is needed to construct an addition and deck to the rear of the existing structure and rebuild the existing rear staircase which requires the following: 1) Variance from Section 10.521 to allow 27% building coverage where 25% is allowed. 2) Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed, or enlarged without conforming to the requirements of the ordinance. Said property is located on Assessor Map 149 Lot 41 and lies within the General Residence A (GRA) District. (LU-23-82)

## **SPEAKING TO THE PETITION**

Attorney John Bosen was present on behalf of the applicant, with the owners/applicants Ashley and Lisa Brown. He reviewed the petition and criteria. [Timestamp 1:03:19]

Mr. Rheame said there was a discrepancy on the dimensional table, with a current condition of 24 feet for both the front yard and the right yard. Ms. Harris said it was a typo for the rear yard.

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

Mr. Rheume said what was asked for was additional space on the property that was modest and that most people walking by would not notice. He said granting the variances would not be contrary to the public interest because the only thing asked for was the relief from the total building coverage, 27 percent when 25 percent is the maximum allowed. He said it would be essentially invisible on the inside of the property and would sort of expand off an existing porch area and would not change any of the neighborhood's characteristics. He said granting the variances would observe the spirit of the ordinance because the applicant's property line went to a certain point but there was a lot of extra property that would appear to be part of the property to a passerby on Orchard Street that was much greater than the two percent the applicant was going over. He said substantial justice would be done because the public would not have an interest that would outweigh the applicant's desire to add some living space. He said it would not diminish the values of surrounding properties because it was a modest addition toward the interior of the property and met all the setbacks and would add value to the applicant's property as well as others. He said the hardship was that the current property's unique aspect was that it was a corner lot with some additional City-owned land that had the look and feel of being part of the applicant's property, which negated any of the concerns that it would be an unreasonable use for the property. Mr. Mattson concurred and said there would be no threat posed to the public's health, safety, or welfare or to public rights.

*The motion **passed** unanimously, 6-0.*

- D.** The request of **Point of View Condominium (Owner)**, for property located at **57 Salter Street #1** whereas relief is needed to relocate the existing residential structure landward of the highwater mark which requires the following: 1) Variance from Section 10.211 and Section 10.531 to allow the following: a) a 2' front yard where 30' is required, b) a 2' side yard where 30' is required; 2) Variance from Section 10.321 to allow a lawful nonconforming structure to be extended, reconstructed or enlarged without conforming to the requirements of the ordinance; 3) Variance from Section 10.516.40 to allow a heating vent to project 1' into the required side yard. Said property is located on Assessor Map 102 Lot 32-1 and lies within the Waterfront Business (WB) and Historic District. (LU-23-83)

## **SPEAKING TO THE PETITION**

Attorney James Steinkrauss was present on behalf of the applicant, joined by the applicants, project engineer Eric Weinrieb, and landscape architect Terence Parker. He asked for an additional five minutes for his presentation.

*Mr. Rheume moved to suspend the rules and allow the applicant 20 minutes for his presentation, seconded by Mr. Mannle. The motion **passed** unanimously, 6-0.*

Attorney Steinkrauss reviewed the petition and criteria. [Timestamp 1:16:33]

Vice-Chair Margeson said the 2018 variances were to allow for a single family dwelling, yet there were two units in the building. Attorney Steinkrauss said there was just one unit in the building but two units in the condo. On the parcel itself, he said there were two buildings and that Unit 2 was a single-family residence. He said his client's condo would also be a single-family residence.

Mr. Rheume said the same relief for the duplex units was before the Board at the last meeting. Mr. Weinrieb said they weren't involved in the original design and permitting but did the removal of the 87 feet over the water on the dwelling unit. He noted that there were detached condo structures on a single lot forming two residential units and the building was cantilevered on a concrete slab over the water. He said they would pick up the building and relocate it and remove the existing foundation and the concrete over the water. He said the retaining wall under the building on the south side was deteriorating so they proposed to have a vertical element between the building and the water and then do a foundation for the building behind it, which he further explained. He said they would raise it up a few feet higher to make it FEMA compliant. He said the unit dwelling area would stay the same but the structure would change, so the condo documentation would have to be updated.

Mr. Rheume said the building was now at a higher elevation than it was before and would have steps and so and asked if that was included in the total coverage calculation. Mr. Weinrieb agreed. Mr. Rheume said the applicant stated that they had a 2-ft setback from the water side but there was a deck that covered that, and that deck would be more than 18 inches above what the previous grade of the property would have been. Mr. Weinrieb said it was the existing wharf and they would cut off a portion of it and recreate it, so the elevation wouldn't change. Mr. Rheume asked if the setback would be two feet or zero feet. Mr. Weinrieb said the two feet would be the building and then there was the gap of the retaining wall because they could not connect the wharf to the building. Ms. Harris said what was changing was the building and moving back to a 2-ft setback. Mr. Rheume said all the structure was higher than what was there previously and noted that the Board denied a similar petition a few weeks back. It was further discussed. [Timestamp 1:41:50]

Mr. Rheume said the applicant was asking the Board to reaffirm its 2018 decision and asked what the applicant was looking for and why they thought the relief granted back in 2018 was in jeopardy. Attorney Steinkrauss said they were asking for the prior variances to be reaffirmed to the extent that it was necessary. Mr. Rheume asked what encroached within one foot into the front yard. Mr. Weinrieb said it was the mechanical vent and explained it further [Timestamp 1:57:00]. Mr. Rheume said the variance cited did not apply to the Waterfront Business District and asked how the Board could approve it. Ms. Harris said the Staff Memo commented that the section cited is not applicable in the Waterfront Business District, so the City Staff didn't think it was needed. It was further discussed. [Timestamp 2:00:40].

Chair Eldridge opened the public hearing.

### **SPEAKING IN FAVOR OF THE PETITION**

No one spoke.

### **SPEAKING IN OPPOSITION TO THE PETITION**

Marcia MacCormack of 53 Salter Street said she was not notified that the building would be converted into condos and thought it wasn't appropriate for the area. She said the applicant expanded the parking area so that she was literally on top of a parking lot now and they were moving the house forward. She said the condition of the seawall was dangerous and she didn't understand why the City gave a building permit for the project.

Susan MacDougall of 39 Pray Street said she lost count of all the variances granted for the property starting in 1990. She said that the Board, by granting all those variances, changed the Waterfront Business District code *de facto* and set a precedent for her side of the road. She said the parking would be impacted if the building were moved back and the condo agreement would be changed, but there was no indication from the other owners that it would be acceptable. She said she was concerned about the 18 inches. She said the proposal was contrary to the public interest.

### **SPEAKING TO, FOR, OR AGAINST THE PETITION**

Attorney Steinkrauss said they were not aware of their obligation to notify neighbors of a conversion of a property, especially two units of a condo. He said the condo abutter did submit a letter of support. He said the variance was specific to the property and met the criteria.

Mr. Weinrieb said the building was getting higher and they weren't asking for a height variance and weren't impacting the parking. He said there was very little waterfront business left except for the Sanders Lobster Pound.

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

### **DISCUSSION OF THE BOARD**

Vice-Chair Margeson said the situation was complicated but she would support the application because it was about the front and right yard setbacks and the right yard setback was going from a negative 5.6' to 2', making it a more conforming use. She said the property had special conditions because it was over the water. Mr. Mandle said it was nice to go from a negative to a positive, but because the building was being moved, he'd like the setbacks to be less nonconforming. Mr. Mattson said he was inclined to support the project because, by the nature of it being in the Waterfront Business District, the setbacks were odd in terms of trying to meet the 30' setbacks in the front, left, and right yards, particularly for that size of lot. He said if a property was going to be moved and get a fresh start, it would be good to have it become more conforming. He noted that the DES criteria was triggering all of it in the first place.

Mr. Rheume said he was on board in 2018 when the original set of variances was approved. He said he empathized with the abutters about how much change was going on. He discussed how zoning originated [Timestamp 2:14:23] and said the Board didn't believe they were setting a precedent. He said they took the hardship criteria seriously, especially in the Waterfront Business District. He said the applicant got a building permit in 2018 and it took a long time to exercise that permit due to things out of their control. He said the parking concern wasn't really an issue. He said the open space coverage would slightly increase from what it was before, noting that over half of the lot was considered open space and the applicant by right could cover another 30 percent of it. He said the setbacks seemed like a lot of relief but wasn't. He said the property was essentially on a peninsula and would have no impact on the light and air of surrounding neighbors. He said the deck wasn't a real issue and hoped that additional relief would not be required.

### **DECISION OF THE BOARD**

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

- 1. The 1-ft encroachment by an exhaust vent would be recognized by the Board.*

*Vice-Chair Margeson seconded the motion.*

Mr. Rheume referred to his comments and said granting the variances would not be contrary to the public interest, noting that it had already been approved as a second dwelling unit in 2018, so they were talking about the net difference to the public of the building being over the water versus it being drawn slightly back from the water. He said it would essentially be the same building but would be raised and still within the allowed building coverage. He said it would not disrupt the nature of the neighborhood. He said the spirit of the ordinance would be observed because light and air requirements would be met. He said granting the variances would do substantial justice, noting that it was a balancing test and some concerns were addressed in 2018 and were not before the Board that night. He said the applicant would still have the full use of the property as was granted in 2018 and have the same size of structure. He said granting the variances would not diminish the values of surrounding properties because the structure would be moved a distance that would not impact them. He said the hardships were that the applicant was previously granted relief to make two dwelling units and ran into some legal issues that were identified late in the process, which required the applicant to move the structure back onto the land. He said the property was at the end of a narrow and short street. He said the use in the Waterfront Business District was decided upon in 2018 but some of the dimensions weren't fully applicable to the property. He said that, due to its location and nature of being surrounded by water on both sides, it was a reasonable use.

*Vice-Chair Margeson concurred and had nothing to add.*

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

- E. The request of **Eric J. Gregg Revocable Trust (Owner)**, for property located at **112 Mechanic Street** whereas relief is needed to install a mechanical unit to the side of the primary structure which requires the following: 1) Variance from Section 10.515.14 to allow a 2' rear setback where 10 feet is required. Said property is located on Assessor Map 103 Lot 25 and lies within the General Residence B (GRB) and Historic District. (LU-23-73)

### **SPEAKING TO THE PETITION**

The applicant/owner Eric Gregg was present to review the petition. He noted that he was seeking a 6' setback, not a 2' setback. He reviewed the criteria and said they would be met.

Chair Eldridge opened the public hearing.

### **SPEAKING TO, FOR, OR AGAINST THE PETITION**

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

### **DECISION OF THE BOARD**

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

- 1. The mechanical unit shall be located to the side of the primary structure and shall be six feet from the rear property line, as indicated in the applicant's submission materials.*

*Mr. Mannle seconded the motion.*

*(Note: the original motion was amended after Mr. Rheaume's suggestion that it include the condition noting the 6' v. 2' setback discrepancy).*

Mr. Mattson said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance because the proposed use would not conflict with the implicit or explicit purposes of the ordinance and would not alter the essential characteristics of the neighborhood, threaten the public's health, safety, or welfare, or otherwise injure public rights. He said the mini split condenser would do substantial justice because it would benefit the applicant and do no harm to the public. He said granting the variance would not diminish the values of surrounding properties because it was a small ask and the proposed lattice work would make it blend in without hindering the air flow, and the lot was very small so there wasn't any other suitable location to put the condenser in. He said literal enforcement of the provisions of the ordinance would result in unnecessary hardship because the property had special conditions that distinguished it from others 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's provision and the specific application of that provision to the property. He said the proposed use was a reasonable one and the unique conditions of the property was that it was an extremely small size and the nonconforming

location of the structure on the property left no other viable alternatives for improving the HVAC system. Mr. Mannle concurred and had nothing to add.

*The motion passed unanimously, 6-0.*

- F. The request of **Karyn S. Denicola Revocable Trust (Owner)**, for property located at **281 Cabot Street** whereas relief is needed to demolish the existing single-family dwelling and detached one-story garage/shed and construct a new single family dwelling with attached garage which requires the following: 1) Variance from Section 10.521 to allow a) 3' front yard setback where 5' is required; b) a 5' south side yard setback where 10' is required; c) a 3.5' north side yard setback where 10' is required; and d) a 43% building coverage where 35% is allowed. Said property is located on Assessor Map 144 Lot 20 and lies within the General Residence C (GRC) District. (LU-23-84)

### **SPEAKING TO THE PETITION**

Attorney Justin Pasay was present on behalf of the applicant, with project engineer John Chagnon and Geoff Spitzer, developer for Chinburg Properties. Attorney Pasay said the Staff Memo indicated that the applicant did not need relief from the additional building coverage. He said they also did not apply for a frontage variance because the zoning ordinance allowed for a lot to be considered conforming as to frontage if certain conditions existed. He said Mr. Chagnon filed a supplemental letter to the Board stating that the property, as of March 1966, had the existing amount of frontage and satisfied the criteria because it was not owned in common with the other properties. Ms. Harris clarified that the relief for 43 percent building coverage was still needed. She said it was the request from Section 10.321 to permit the construction of a single-family dwelling on the property, which is more nonconforming for building coverage, that the Staff did not believe was needed. Attorney Pasay reviewed the petition and criteria. [Timestamp 2:46:33]

Vice-Chair Margeson said the applicant referred to the undeveloped lots on Islington Street and said the applicant's lot had a special condition. She said 28 Rockingham was improved and there was nothing preventing the backs of those buildings from being developed. She said she was struggling to find how that wasn't going to happen and why it was a special condition of the applicant's property. Attorney Pasay said the proximity to those properties is what made it unique. He said there were narrow properties further north on Cabot Street with single-family residences that filled up most of the lots. He said the applicant's property had a larger frontage of 50 feet on the eastern side of Cabot Street and the existing built condition of the garage, which was relevant because for decades the appearance of that property had been a single-family house with a garage offset to the right. He said there was also the proximity with the larger massing and scaling of the properties on Islington Street because now that area is used as a driveway and access to the building, and if they tried to develop more of that area, additional relief would be required.

Vice-Chair Margeson said the General Residence C District has the most building coverage outside of the MRO/MRB zone within the City because they're the smallest lots, 3,500 square feet, but the applicant was asking for something even more, three percent more than what's allowed throughout

the entire City for lot coverage. Attorney Pasay said it came down to the reasonableness analysis. Vice-Chair Margeson asked how that wasn't a marked conflict with the ordinance, given that the MRO/MRB zone is less than the three percent. Attorney Pasay said it pertained to the first and second criteria and whether the proposal would alter the essential characteristics of the neighborhood. He said the applicant laid out that analysis but the neighborhood has lots that are quite small and filled up with single-family residences, especially on the eastern side. He said there was a boarding house across the street and a multi-family going toward McDonough Street. He said they were taking a detached garage concept and attaching it to the main building, which alone made it more consistent with the neighborhood. He said it was in the public's interest that they were reducing encroachments in the setback.

Vice-Chair Margeson said the proposed residence was different on Cabot Street and was out of character with the other New Englanders on that street. In terms of setbacks, she said if the building were demolished, there would be plenty of room within the building envelope and the applicant would probably not need relief. She asked why the structure couldn't be reduced and built within the building envelope. Attorney Pasay said the goal was to maintain the property with a garage. He said the building wasn't in the Historic District and they could do a front door on the front façade as a condition of approval. He said what they were proposing for 2,500 sf of living area was consistent with what was just built at 28 Rockingham directly behind the property. Vice-Chair Margeson said the zoning ordinance protected buildings of historic or architectural interest and that the building was an 1870s structure in a line of New Englanders, which concerned her.

Mr. Mannle asked if the applicant considered rehabbing the house and getting rid of the garage. Mr. Spitzer said there were structural issues. Mr. Mannle said those were problems found during the building inspection when the house was sold in January, yet the applicant still bought the house. Mr. Spitzer said they did so with the intent that they would request a variance. He said the floor plan of the first floor and coverage spoke to an age in place option of having a master bedroom suite on the first floor. Mr. Rheume said the applicant did a good job for the streetscape but said a letter received from a nearby property owner raised a good point about the doorscape seen in all the gabled New Englanders up and down the street. He said putting a door in the first-floor master bedroom would be odd. Attorney Pasay said they could make it a condition of approval that a faux door be built to make the house more aesthetically consistent with the other homes.

Chair Eldridge opened the public hearing.

#### **SPEAKING IN FAVOR OF OR IN OPPOSITION TO THE PETITION**

No one spoke.

#### **SPEAKING TO, FOR, OR AGAINST THE PETITION**

Elizabeth Bratter of 159 McDonough Street and 342 Cabot Street said the garage was just a carport when she moved to that neighborhood. She said the building was missing the front door and steps, which was key to the neighborhood's character.

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

## **DISCUSSION OF THE BOARD**

Vice-Chair Margeson said she would not support the application because the addition would not prevent overcrowding of the property and she didn't find that the property had any special conditions. She said the undeveloped property on Islington Street was not a condition of the applicant's property and thought the applicant's property was bigger than what was allowed in the zone. She said the applicant was going against the highest building coverage in the ordinance, which was 40 percent. She said she didn't believe that a stipulation could be made about the front door because it would make exterior structural changes to the building and drive some of the interior changes, so it would be a different application. Mr. Mattson said he didn't understand why the applicant couldn't build the house within the envelope, given that the lot is bigger than required and regular-shaped one, but he said he had no problem with the rest of the application. Mr. Mannle said he couldn't support it. He said the applicant knew the condition the house was in when they bought it and should have taken a right of first refusal to see if the house could be fixed before they bought the property. He said the demolition of the house would be a clean slate, so he would expect the setbacks to be as close to conforming as possible. Mr. Rheaume said the Board had little control over a building's demolition and thought the house would be a difficult rehab. He said some relief was appropriate to give the property the feel that the neighborhood had but thought the Board didn't want the house to be set back much further and said the applicant was also allowing more room for building maintenance. He said the light and air for the neighbor would also be improved. He said his concern was the total building coverage and that the applicant was asking for a little too much house for the lot without enough justification. He said the door was also an issue because making it a condition that it be a front door would change the design and the front setback.

## **DECISION OF THE BOARD**

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

Vice-Chair Margeson referred to her previous comments. She said the spirit and intent of the ordinance was to prevent overcrowding and the applicant was asking for 43 percent building coverage where the maximum coverage allowed was 35 percent. She said she did not think that the light and air issues on Islington Street cured this defect. She said the lot was larger than required by zoning and 43 percent would fill up that lot even more. She said the property was tight already. She said she didn't find that the property had an unnecessary hardship for the building coverage and all the requested setbacks, and she didn't think the empty parking lot on the other lots really helped the applicant in terms of a hardship. She said she could understand why the applicant wanted to do what they proposed but didn't feel that there was a hardship driving the variance request. Mr. Mannle concurred. He said the lot was a good-sized one and could have a good-sized house on it, and he didn't see the necessity or the hardship for all the setback relief, especially the building coverage relief, because the applicant was starting with a clean slate. Chair Eldridge said she was torn because the relief for the side lots was very narrow and the coverage was increased. She said a front door would continue the rhythm and without it but it wasn't something the Board could do just as

an add-on. Mr. Rheume said he would support the motion, noting that a more convincing argument from the applicant would have been to present the Board with the building coverage of all the surrounding buildings. He agreed that the door would require further building design.

*The motion **passed** by a vote of 4-2, with Ms. Record and Chair Eldridge voting in opposition.*

*At this point in the meeting, Mr. Mannle moved to go past 10:00, seconded by Vice-Chair Margeson. The motion **passed** unanimously, 6-0.*

Mr. Rheume recused himself from the following petition and left the meeting.

- G.** The request of **Sureya M Ennabe Revocable Living Trust (Owner)**, for property located at **800 Lafayette Road** whereas relief is needed to increase the height of the existing sign which requires the following: 1) Variance from Section 10.1281 to alter a nonconforming sign without bringing it into conformity; and 2) Variance from Section 10.1253.10 to increase the height to 20 feet and 1 inch where 20 feet is allowed. Said property is located on Assessor Map 244 lot 5 and lies within the Gateway Corridor (G1) District and Sign District 5. (LU-23-66)

### **SPEAKING TO THE PETITION**

Peter March, the sign designer from NH Signs, was present on behalf of the applicant and reviewed the petition. He said the sign was permitted to be 20 feet high and had been consistently hit by cars in the last year. He said they wanted to raise the sign's bottom to 14'1" to prevent that. He reviewed the criteria and noted that the special conditions was that gas stations needed price signs and there was no other suitable place for the sign, and leaving it at its present height would subject motorists to unnecessary danger. He said the new sign would be the same as the old sign.

Mr. Mattson asked if the change was triggered by the sign being hit recently. Mr. March said the sign was hit in the winter and was repaired but it was always being hit.

Chair Eldridge opened the public hearing.

### **SPEAKING TO, FOR, OR AGAINST THE PETITION**

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

### **DECISION OF THE BOARD**

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

Mr. Mattson said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said the proposed use must not conflict with the implicit or explicit purposes of the ordinance and not alter the essential characteristics of the neighborhood nor threaten the public's health, safety, and welfare or otherwise injure public rights. He said the new

sign would look the same and have the same use as the existing sign and would improve the public's health, safety, and welfare. He said substantial justice would be done because the benefit to the applicant would not be outweighed by any harm to the public or other individuals. He said it would not diminish the values of surrounding properties, noting that there was no reason to believe that the small modification to the sign would do so. He said literal enforcement of the provisions of the ordinance would result in unnecessary hardship because the property has special conditions that distinguish it from other properties in the area, and owing to those special conditions, a fair and substantial relationship does not exist between the general public purpose of the ordinance's provision and the special application of that provision to the property, and the proposed use is a reasonable one. He said the proposed use would stay the same and was a reasonable use. He said the unique conditions of the property is that the small island area where the sign is located is one of the few places to locate it, and a sign was a critical feature for a gas station because it stated gas prices. He said those were unique conditions to the property compared to the surrounding ones. Mr. Mannle concurred and said it was a perfect example of what should have been an administrative approval because it was a one-inch difference.

*The motion passed unanimously, 5-0, with Mr. Rheume recused.*

## **II. OTHER BUSINESS**

There was no other business.

## **III. ADJOURNMENT**

The meeting adjourned at 10:45 p.m.

Respectfully submitted,

Joann Breault  
BOA Recording Secretary