

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

7:00 P.M.

May 2, 2023

MEMBERS PRESENT: Phyllis Eldridge, Chair; Paul Mannle; Thomas Rossi; David Rheume; Jeffrey Mattson; Jody Record, Alternate; ML Geffert, Alternate

MEMBERS EXCUSED: Beth Margeson, Vice Chair

ALSO PRESENT: Stefanie Casella, Planning Department

Chair Eldridge stated that alternates Ms. Geffert and Ms. Record would take voting seats throughout the meeting.

I. OLD BUSINESS (*Continued from April 18, 2023*)

- A. REQUEST TO POSTPONE** The request of **Jared J Saulnier (Owner)**, for property located at **4 Sylvester Street** whereas relief is needed to subdivide one lot into two lots which requires the following: Proposed Lot 1: 1) Variances from Section 10.521 to allow a) a lot area and lot area per dwelling of 9,645 square feet where 15,000 is required for each; b) 80 feet of lot depth where 100 feet is required; and c) a 9 foot right side yard where 10 feet is required. Proposed Lot 2: 1) Variances from Section 10.521 to allow a) a lot area and lot area per dwelling unit of 6,421 square feet where 15,000 is required for each; b) 40 feet of street frontage where 100 feet is required; and c) 80 feet of lot depth where 100 feet is required. Said property is located on Assessor Map 232 Lot 36 and lies within the Single Residence B (SRB) District. **REQUEST TO POSTPONE (LU-23-27)**

DECISION OF THE BOARD

*Mr. Mannle moved to **postpone** the petition to the May 16 meeting, seconded by Mr. Rossi.*

Mr. Mannle said it was a routine postponement, noting that the previous agenda had a lot of old business and lack of board members.

*The motion **passed** unanimously by a vote of 7-0.*

- B. POSTPONED TO MAY 16 2023** The request of **Cynthia Austin Smith and Peter (Owners)**, for property located at **9 Kent Street** whereas relief is needed to demolish the existing two-family and construct a single-family dwelling which requires the following: 1) Variances from Section 10.521 to allow a) a lot area and lot area per dwelling of 5,000 square feet where 7,500 square feet is required for each; b) 53% building coverage where 25% is the maximum allowed; c) a 4.5 foot rear yard where 20' is required; d) a 0.5 foot side yard where 10 feet is required; e) a 0 foot front yard where 11 feet is allowed under Section 10.516.10; and f) a 9.5 foot secondary front yard where 13 feet is allowed under Section 10.516.10. 2) A Variance from Section 10.515.14 to allow a 1.5 foot setback for a mechanical unit where 10 feet is required. Said property is located on Assessor Map 113 Lot 42 and lies within the General Residence A (GRA) District. **POSTPONED TO MAY 16 2023 (LU-23-28)**

*The petition was previously **postponed** to the May 16 meeting.*

II. NEW BUSINESS

- A. Petition of 729-733 Middle Street Condominium Association, Nicole M. Bodoh and Craig Crowell**, for Appeal of an Administrative Decision not to present to the Board of Adjustment the Motion for Rehearing of Variance Application of **David Sinclair and Nicole Giusto** for property located at **765 Middle Street** due to an untimely request. Said property is shown on Assessor Map 148 Lot 37 and lies within the General Residence A (GRA) and Historic Districts.

SPEAKING TO THE APPEAL

Attorney Chris Swiniarski representing the appellants Nicole Bodoh and Craig Crowell was present. He said the only item for the board to consider was whether the Planning Director Peter Britz had the authority to decide the Motion for Rehearing. He said the Planning Director could not usurp the BOA's authority. He said ample evidence was submitted by the appellants to show that the mail carrier simply signed off that the notices were delivered but didn't prove that they were received. [Meeting video timestamp 6:56].

Mr. Rheume verified that the appellants were the owners of the two condominium units and the lot and formed the condominium association. He noted that the appellant was not appealing whether the Planning Director made a correct decision but was appealing whether he had any right to make that decision. He asked what the basis in law was that made the appellant believe that the only way that any type of appeal could be adjudicated was by going through the entire BOA. Attorney Swiniarski said there was no statutory authority giving the Director of Planning the right to decide a motion for a rehearing. Mr. Rheume asked if there was something that specifically stated that only the BOA could make that decision. Attorney Swiniarski said it was a right only granted to the BOA and was a matter of wording. Mr. Rheume said the appellant was minimizing the argument to the abutters' attorney stating that they didn't act quickly enough in responding after the BOA's decision. He asked why Attorney Swiniarski's client took over 30 days to respond. Attorney

Swiniarski said it took time to figure out why there was a record at the post office with a signature stating that it was delivered and tracking down the information through the post office, but then realizing that the signature was the same on all the deliveries. He said they didn't discover the failure of notice until after the decision was made. Mr. Rheume asked what the appellants' expectation would be for the city to ensure that they are fully carrying out the requirements of the State Statute. Attorney Swiniarski said they didn't have a legal answer for that yet and didn't expect the city to change its ways and do anything different. He said it was a unique situation.

Mr. Rossi said it was the first time he'd heard that the appellants' argument was based on the statement that the Planning Director did not have the authority to screen what comes or does not come before the BOA. He said he had difficulty relating that assertion to the other arguments made about the delivery of mail and its verification, and he asked what relevance that had to the argument if the main objection was that city staff did not have the authority to make the decision of whether or not it came before the board. Attorney Swiniarski said he was before the BOA to give some context of why it was submitted when it was and what has been deemed as untimely. Mr. Rossi said Attorney Swiniarski was also stating that he was not asking the board today to assess whether the Planning Director's decision was correct because that argument had no place in the board's deliberations that night. Attorney Swiniarski said it was to give some context to the convoluted procedure they were faced with, where a decision had to be made first on the administrative appeal of the Planning Director's decision. Mr. Rossi asked if Attorney Swiniarski could refer to a specific section of the ordinance. Attorney Swiniarski said it was Section RSA 677:2 and that he didn't have a copy of the Statute, only the reference.

Chair Eldridge said she also did not read in the appellants' submittal that it was the authority of Mr. Britz that they were questioning, but she pointed out that Mr. Britz didn't make the decision that there would not be a rehearing. She said he decided that the request for a rehearing was received too late and that those were separate issues. It was further discussed. [Timestamp 23:35].

SPEAKING TO THE REBUTTAL

Attorney Monica Kaiser was present on behalf of the abutters David Sinclair and Nicole Guesto. [Timestamp 27:25]. She said she also had not read about the administrative appeal being filed and the questioning of Mr. Britz's authority to determine whether something was timely submitted to the board. She said she did not think that the Statute required the board to make those decisions. She read from RSA 677:2 and noted that it stated 'within 30 days, a motion ... to the BOA', so it was true that if a motion for a rehearing was filed within 30 days, it came to the board, and only the board could determine the merits of that motion for rehearing, but the jurisdiction was predicated upon a timely filing, which did not occur. She said she disagreed that Mr. Britz was not authorized to make that type of decision. She said Section 2.1 of the ordinance validated certain authorities to the code official, which in this case was Mr. Britz. She said the board's rules of procedure also set forth minimum standards of what the base application required and it didn't address this specific issue of a rehearing but stated that the code enforcement officer was authorized to return the applications that did not meet minimum criteria. She said the city's obligation was just to send out the notice and that they didn't have to send it registered mail but they just had to have verification of mailing, which was very different from verification of receipt. She said the notices had to be sent

out no less than five days before the meeting, but all kinds of things could happen, like people away on vacation, and the law could not address every single one of them. She said Ms. Bodoh only had to file an application for a request for rehearing in 30 days but instead filed it two months later.

Mr. Rheume asked if there was anything in the RSA that would delineate powers only to the BOA and restrict them from a designated code official with the city. Attorney Kaiser said an affected party may apply for a rehearing but didn't reserve it explicitly to the BOA or list the code official as someone who could entertain the merits of a rehearing request. She said the Statute included the phrase 'within 30 days' [timestamp 35:44]. Mr. Rossi asked Attorney Kaiser if she was familiar with the case of the Cardinal Development Corporation v. the Town of Winchester ZBA, which he read an excerpt from [timestamp 37:50]. He said it seemed to be an explicit acknowledgement that the Planning Director would not have had the authority to make an exception to the 30-day rule. Attorney Kaiser agreed. Attorney Swiniarski said there was no reason to debate that issue because they didn't claim that the Statute said anything else. He said it was stated that notice only had to be sent to the condo association, but notice was never sent to them. He said there was discussion about constructive knowledge from conversations and text messages but that it had no bearing. He said the references in RSA 677:2 stated a rehearing was allowed to go to bodies other than the BOA, but that was only in a municipality that did not have a BOA and wasn't applicable in this situation. He said he hadn't read the Cardinal Development Corporation case mentioned but based on its description, he said it was a decision made by the Planning Department. Mr. Rossi said there was no real argument put forth in the documentation that addressed whether the Planning Director had the authority to make the decision and that he only cited the case because he was grasping at straws to find support for the appellants' argument. It was further discussed. [Timestamp 42:47]. Mr. Mattson said the Planning Department was just notified of the 30-day rule as opposed to making a determination, so the authority of the Planning Director would almost be irrelevant because the 30-day rule was the authority and the appellant was just being notified of the 30-day rule. Attorney Swiniarski said there had to be a yes or a no to have a rehearing and the BOA had to decide.

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. Mannle moved to **deny** the request, seconded by Mr. Rossi.*

Mr. Mannle stated that, without certified mail, there was no assurance of whether an abutter's notice got there, but the issue was whether the Planning Director can make an administrative decision. He said the ordinance stated that appeals from decisions or orders from a code official may be made by any person within 30 days after the date the original written decision was filed. According to the documentation, he said that date would have been November 17, and anything after that was an invalid appeal because it was after the 30-day mark. He said the appellant wanted the board to consider three months late. He said Mr. Britz had the authority to make the decision he made.

Mr. Rossi concurred and had nothing to add. Mr. Rheume said he wished the ordinance was clearer but thought it was clear enough that in Section 10.211, it stated that the ordinance shall be ministered and enforced by the code official. In Article 15, he said it defined the code official as ‘any employee of the City of Portsmouth is authorized to administer and enforce the zoning ordinance, including but not limited to the Planning Director and the Chief Building Inspector’. He said in Section 10.234.20, it referenced appeals from decisions or orders from the code official made by any persons 30 days after the original decision was made. He said the ordinance was clear that the Planning Director had the power to make some levels of decisions, especially when an appeal did not make the specific date requirement.

*The motion to deny **passed** unanimously by a vote of 7-0.*

- B.** The request of **Peter G Morin Trust, Peter G Morin Trustee (Owner)**, for property located at **170 Mechanic Street** whereas relief is needed to install a generator which requires the following: 1) Variance from Section 10.515.14 to allow a) 4 foot rear yard where 10’ is required and 5.5 foot rear yard where 10 feet is required; 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 102 Lot 7 and lies within the General Residence B (GRB) and Historic District. (LU-23-35)

SPEAKING TO THE PETITION

The applicants Peter Morin and Carol Bird were present to speak to the petition. Mr. Morin said he proposed to place the generator at the back of the garage and that all the neighbors were in support. Ms. Bird reviewed the criteria and said they would be met.

Mr. Rheume verified that the generator would operate only during a loss of normal power until the power was restored. Mr. Morin agreed but said a test run had to be done every week that would last 16 seconds. Mr. Rossi asked why the backup generator couldn’t be placed on the other side of the existing garage window to give the 10-ft setback from the rear yard. Mr. Morin referred to the 8-ft line that went from the garage to the fence and said it had to be five feet from the window. Mr. Rossi asked if it would be adjacent to the walk line. Mr. Morin said it was all pavement and there was a grill outside the 8-ft line affixed to a gas line. He further explained it.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

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

Mr. Rheaume said it was a standby generator that would operate briefly for a weekly test; otherwise, its imposition to the neighboring properties would be limited to a timeframe where there would be a significant power outage. He said it might be possible for the applicant to put the generator on the opposite side of the window and meet the 5-ft requirement to be in full compliance with the back lot line and that there was nothing to indicate that the applicant was using the back area as a usable space with a grill and so on, but he thought it was a lot to ask the applicant to do for what he was requesting. He said granting the variances would not be contrary to the public interest because the generator would not be seen from any of the three streets bordering the applicant's property and the generator would not be right up against the abutter's house. He said it would observe the spirit of the ordinance because it wasn't a full structure and the 25' setback becomes a 10' setback. He said the goal was to keep light and air, and the standby generator was 29 inches high and well within the existing fence and some distance away from the neighboring house and property. He said substantial justice would be done because of the benefit to the applicant of having security in the unusual event of a power outage. He said granting the variances would not diminish the values of surrounding properties because the generator would be a small imposition and relatively far from the one significant abutter's house. He said literal enforcement of the ordinance would result in an unnecessary hardship due to the special conditions of the applicant having a lot that faced on three streets and limited the location of the generator. He said it was a reasonable request. Mr. Mannle concurred and had nothing to add.

*The motion **passed** by a unanimous vote of 7-0.*

- C. The request of **RTM Trust, Ryan T Mullen and Heidi E K Trustees (Owners)**, for property located at **253 Odiorne Point Road** whereas relief is needed to construct a deck extension which requires a Variance from Section 10.521 to allow a 30 foot rear yard where 40 feet is required. Said property is located on Assessor Map 224 Lot 10-19 and lies within the Single Residence A (SRA) District. (LU-23-36)

SPEAKING TO THE PETITION

The applicant Ryan Mullen was present and said he needed drainage improvements and repairs to the deck and staircase that were disconnected due to water issues. He reviewed the petition and the criteria and said the two most affected neighbors were in support.

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

Mr. Mannle said it was a minimal request because it was a corner lot that would remain at 30 feet. He said granting the variances would observe the spirit of the ordinance because the house's location was already nonconforming. He said substantial justice would be done because the applicant had a wetlands problem in his backyard and was doing all he could do address it but was losing his outdoor space in the process, so he wanted to expand the deck. He said granting the variances would not diminish the values of surrounding properties because the project would have no effect on them. He said literal enforcement of the ordinance would result in an unnecessary hardship because the applicant had gone through the effort to comply with the wetlands ordinance and to remove the standing and running water from his property and from his neighbors' properties by sacrificing his backyard. He said it would be a benefit for the applicant and his neighbors to ensure that the water flowed away from their properties.

Mr. Mattson concurred and added that the project would not alter the essential characteristics of the neighborhood. He said it would benefit the applicant and would not be outweighed by any harm at all to the public. He said the irregular-shaped lot and the structure's location on the lot were unique conditions that resulted in being an unnecessary hardship.

The motion passed by a unanimous vote of 7-0.

- D.** The request of **Cherie A Holmes and Yvonne P Goldsberry (Owners)**, for property located at **45 Richmond Street** whereas relief is needed to construct a greenhouse which requires the following: 1) Variance from Section 10.521 to allow a 5.5 foot rear yard where 15 feet is required; 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 108 Lot 18 and lies within the Mixed Residential Office (MRO) and Historic District. (LU-20-249)

SPEAKING TO THE PETITION

Architect Anne Whitney was present on behalf of the applicant. She noted that they received initial approvals in 2021 to get rid of the existing garage and build another one with a greenhouse attached. She said the proposed greenhouse at that time was 10'x10 but they discovered that they could get better efficiency by going with a standard-sized greenhouse with a 30-inch module, which was where the request for extra footage came from. She said the prior stipulation to maintain a 5-ft setback along the rear property line would be done and they were only adding an extra 15-sf increase of the greenhouse. She reviewed the criteria.

Mr. Mannle verified that the greenhouse would now be five feet and change. Ms. Whitney agreed. Ms. Geffert asked why the new greenhouse would be better. Ms. Whitney said she had been unaware of the greenhouse company's standard sizing but later found out that the energy use would be more efficient for the same amount of money. 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 project as presented and advertised, with the following stipulation:

- 1. The variance will be 5 feet plus or minus as opposed to the advertised value of 5.5 feet as requested in the staff memo.*

Mr. Mannle seconded the motion.

Mr. Rheume said granting the variances would not be contrary to the public interest because there was nothing to distinguish the slightly smaller greenhouse from the slightly larger and more energy-efficient one and the public wouldn't notice what was changed. He said the spirit of the ordinance would be observed because it was a setback relief but no greater than what was previously provided by the board, and the additional relief sought was minimal. He said there was no square footage relief and the applicant was still within the allowed building coverage. He said granting the variances would do substantial justice because there was nothing the public would perceive that would outweigh the advantages to the applicant by saving money and getting a more efficient greenhouse. He said the surrounding property values would not be diminished by such a minor variation to what was previously approved. Relating to the unnecessary hardship, he noted that the petition was previously approved and the applicant was only asking for a slight increase in the overall footprint and size of the structure, which was a special condition and reasonable. Mr. Mannle concurred and had nothing to add.

The motion passed by a unanimous vote of 7-0.

Mr. Rheume recused himself from the following petition.

- E. The request of 45 Rockingham St LLC (Owner), for property located at 45 Rockingham Street** whereas relief is needed to construct a front porch and rear addition which requires the following: 1) Variance from Section 10.521 to allow a) .5 foot front yard where 5 feet is required, b) 1.5 foot side yard where 10 feet is required, c) 41% building coverage where 35% 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 144 Lot 6 and lies within the General Residence C (GRC) District. (LU-23-41)

SPEAKING TO THE PETITION

Attorney Kevin Baum was present on behalf of the applicant, with the project team and architects Mark Gianniny and Richard Desjardins. Attorney Baum said the notice included a variance that wasn't needed, the one for the front setback. He said a zero setback was permitted, which he further explained. He said the lot was small and had an 1890s single family home. He said the house would be kept but there would be an increase in volume. Mr. Gianniny reviewed the petition and diagrams

in detail [timestamp 1:38:33]. Attorney Baum reviewed the criteria, noting that the special conditions were the very narrow site and that most of the existing home was already in the side setback that didn't leave much room on the other side.

Mr. Rossi said his concern was the size of the two dormers and their impact on the mass of the building. He said it did look substantially different from the houses that surrounded it and asked how that didn't alter the essential characteristics of the neighborhood. Attorney Baum said they were consistent with height requirements and that there were several other multi-family houses in the general area that were consistent in mass and far more built out on their lots. He said it was a reasonable compromise to allow the use of more livable space on the third floor. He said the neighbor was protected by the fact that no windows could be placed there. Mr. Rossi said the two houses were so close that the dormer wouldn't change the amount of sunlight in that little alleyway.

Chair Eldridge opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

Mark Bodie of 121 State Street said he was in support of the project, noting that the home used to be in terrible disrepair and there used to be a lot of trash on the property, which was a constant headache for the neighborhood. He said the applicant addressed those issues and that the neighbors were excited about how the improvements would benefit the overall area.

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

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

DECISION OF THE BOARD

*Mr. Mattson moved to **grant** the variances for the project as requested.* He said he had some hesitation about the overall mass and dormers and the total buildout but that the variances requested didn't address that. *Ms. Geffert seconded the motion.*

Mr. Mattson said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance, would not alter the essential characteristics of the neighborhood, and air and light would be maintained around it. He noted that the side yard setback would be the same, so the addition was really onto the rear yard and would improve the front yard by removing the front yard encroachment. He noted that it was a dense neighborhood so the open space would be met. He said granting the variances would do substantial justice because it would improve the property and benefit the applicant and would outweigh any potential harm to the public, especially by removing the encroaching stairs into the sidewalk. He said granting the variances would not diminish the values of surrounding properties because renovating and improving the property would increase its value as well as those of the surrounding properties. He said literal enforcement of the provisions of the ordinance would result in unnecessary hardship because the requested variances were due to the small and narrow lot, which was already undersized and in a very dense zoning

district. He said the proposed use was reasonable. Ms. Geffert concurred and said the fact that the dormers were set back from the street were in keeping with the neighborhood.

The motion passed by a unanimous vote of 6-0, with Mr. Rheaume recused.

Mr. Rheaume returned to his voting seat and Mr. Mattson recused himself from the following petition.

- F. The request of **Bucephalus LLC (Owner)**, for property located at **650 Maplewood Avenue** whereas relief is needed to remove the outdoor fenced storage area and construct a 48 foot by 25.5 foot addition to the rear of the existing structure which requires a Variance from Section 10.592.20 to allow the expansion of space used for motorcycle sales located adjacent to a Residential district where 200 feet is required. Said property is located on Assessor Map 220 Lot 88 and lies within the Business (B) District. (LU-21-111)

SPEAKING TO THE PETITION

Attorney Chris Mulligan was present on behalf of the applicant, Motorbikes Plus LLC, along with the company's principal John Thompson. Attorney Mulligan said the applicant was before the board in 2021 for a special exception to use the site for motor vehicle sales. He said his client planned to use the existing site as it was with very minor modifications to it for motorcycle sales. As the project progressed, he said his client found that rather than re-using the existing fenced-in outdoor storage behind the building, it would be better to construct a modest addition. He said the property was shaped in an unusual zig-zag pattern and on a corner lot with frontage on Maplewood Avenue and Emery Street and also had a wooded buffer and utility corridor between the building and the residential area further down on Emery Street. He reviewed the criteria and said they would be met.

Mr. Rheaume said he was confused as to why the application was coming before the board again and how Section 10.592 of the ordinance was being interpreted. He said that section spoke to the minimum distance between lots and any other residential/mixed-residential or character district, but he thought it fell under Section 10.592.20, which was based on the location of the use, so the minimum distance between use and any residential/mixed residential or character district and Sections 11.10 and 12.30, sales and repair of vehicles, were 200 feet in the existing and proposed conditions table, and setback from the residential district was zero feet existing and zero feet proposed. He said one section talked about a lot line and another talked about the use, but there was nothing in the presentation regarding specific distances of the new addition relative to any of the abutting properties, so it seemed irrelevant to the fact that there was an addition on it. He asked Attorney Mulligan why he was before the board. Attorney Mulligan said when they submitted the application two years before, the principal planner said that motor vehicle sales within 200 feet of a residential zone required relief. Mr. Rheaume said the zero foot setback was indicated in the table from the staff report. Ms. Casella said the zero foot setback related to the use of the lot as a whole, so because the lot abutted the residential lots, that was the zero foot setback. She said the city was treating the use as the use of the entire lot, not just the use of the building on the lot, and because that use was within 200 feet of the residential district. Mr. Rheaume asked what had changed from

the previous application, noting that the applicant wasn't changing the lot's dimensions or location but just adding a structure. Attorney Mulligan said the Planning Department's position is that representations made during presentations and materials submitted are considered conditions of approval, so when he came before the board two years ago, the proposal was to adaptively re-use the existing built environment and not change it. Since the applicant was now changing it however, he said it was a different project, even though the relief was similar. It was further discussed. Ms. Casella said the applicant was back because it wasn't what the board previously approved but was an increase in the square footage. Attorney Mulligan noted that the fence was gone and the two storage containers would be removed from the lot.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

*Mr. Rossi moved to **grant** the variance for the application as presented and advertised, with the following **stipulation**:*

- 1. The two temporary storage units now in the space that is going to be built out shall be removed from the property.*

Ms. Record seconded the motion.

Mr. Rossi said it was a change to a building for a use that was previously approved by the board, and the change is a reasonable one that will improve the general aesthetics of the property. He said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance, noting that the ordinance allowed this use of the property and that it had already been granted by special exception. He said substantial justice would be done, which was the balance of who benefits and who suffers, and he didn't think anyone would suffer from the project. He said the expansion of the building wasn't near the residential lot line and in fact was away from that lot line and would be hidden from it and also hidden from Maplewood Avenue, so it would have no impact on the public. He said granting the variance would not diminish the values of surrounding properties because finding a good use for the property and rehabbing the building would improve the values of the entire area. He said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship due to the special condition of the property of having already been approved for the use by special exception. He said that created a situation where denying a modest change in the structure would create a hardship not consistent with the previous actions of the board. He said the board should accept and approve the application. Ms. Record concurred and had nothing to add.

Mr. Rheume said he would support the motion, although he didn't think the applicant needed to be in front of the board. He said there was nothing in what was previously approved that had anything to do with the size of the building, and he didn't see why a decision to add an addition changed in any way what the board previously approved. He said there were multiple months in a row that the

board had to meet for a second time, and now they were meeting in May to complete their April business. He said the board had to be careful in granting the variance because a case could arise where an applicant would be before the board again and denied, and then there would be a court case where the applicant would say that they shouldn't have been before the board a second time.

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

Mr. Mattson resumed his voting seat.

- G.** The request of **Cate Street Development LLC (Owner)**, for property located at **360 US Route 1 BYP** whereas relief is needed to install a sign on the northern façade of the building which requires a Variance from Section 10.1271 to allow a sign to be installed on a façade not facing the street or with a public entrance; 2) Variance from Section 10.1242 to allow more than one parapet sign above the ground floor per facade. Said property is located on Assessor Map 172 Lot 1 and lies within the Gateway Corridor (G1) District. (LU-23-44)

SPEAKING TO THE PETITION

Attorney Chris Mulligan was present on behalf of the applicant ConvenientMD. He reviewed the petition, noting that the property was part of the West End Yard's development and that they proposed to install a series of signs on what would be the regional headquarters of ConvenientMD, which would be mostly office space and not a medical facility. He explained where the signage would be located and said the signage on the façade facing the north required relief because it didn't face a public way driveway, or parking lot with a principal entry. He said the motorists heading south could go past the building if it didn't have the proper signage. He said the other relief they were seeking was to identify the two parapet signs, of which the ordinance only allowed one. He said they wanted to place the logo sign on each one and that it was within the amount of allowed square footage but just the number and location of them were not compliant with the zoning ordinance. He reviewed the criteria and said they would be met.

Ms. Geffert asked how bright the parapet signs were and if the nearby condominium residents would see them. Attorney Mulligan said the signs would comply with the ordinance's illumination requirements. Mr. Mattson asked if the parapet entryway shown on the southern façade was just for ConvenientMD or also went to the other portion of the building. Attorney Mulligan said it was exclusive for ConvenientMD. Mr. Rheume noted that the developers for the West End Yards got relief from the board for the main entry sign, and he asked if ConvenientMD headquarters would be included on that sign. Attorney Mulligan said they would not be included. Mr. Rheume asked if there was anything further on Sign No. 1 that would help guide the clients to make a left-hand turn onto the street to access the building Attorney Mulligan said there were internal wayfinding signs throughout the West End Yards. Mr. Rheume asked if the dual parapet signs were both main entrances to the headquarters of if one was a preferred entrance. Attorney Mulligan said the sign on the right side would be the main entry. Mr. Rheume said it seemed like the signage in both locations was identical and could cause confusion. Attorney Mulligan said the facility wasn't an acute care walk-in one, so it would be easy to stick a small sign on the doors below the second

parapet sign noting that the main entry was to the right. He said the company name was spelled out under the right parapet sign but over the entrance. Mr. Rheume said that ConvenientMD had their headquarters sign on the back side, and asked how the other signage would let people know not to expect medical services. Attorney Mulligan said they had an urgent care facility down the block, so it wasn't that far for someone who had an emergency situation to go to. He said there was a limited amount of square footage that the ordinance allowed to make the sign more prominent, and if they made the Convenient MD sign larger so that it indicated ConvenientMD Headquarters, they would run out of the amount of signage they were entitled to.

Mr. Rossi verified that there would not be a ConvenientMD indicator on the main entry sign. He asked which of the P01, P02, and P03 signs were designed to address the client's concern about people driving past the facility. Attorney Mulligan said it was the P03 sign and that it wasn't one of the parapet signs. Mr. Rossi asked what then was the rationale for the two parapet signs. Attorney Mulligan said it was for aesthetics due to the blank façade. Mr. Rossi asked how the two P01 signs were different from one another. Attorney Mulligan said one stated ConvenientMD on the bottom.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke and Chair Eldridge closed the public hearing.

DISCUSSION OF THE BOARD

Chair Eldridge said she thought the large P03 sign on the back of the building was useful if one was coming from the traffic circle because it was large enough that it could slow a motorist down before getting to the traffic circle. Mr. Rheume said he felt that the P03 sign was an innocuous one but that the word 'headquarters' on it implied what the building's use was. He said it was a hardship for the property to have no road there and that the West End Yards was set up to connect all those properties in various ways, which stranded the applicant's building. He said his one concern with the application was that it should be clearly indicated on all signage that it's a headquarters and not a ConvenientMD where someone seeking medical attention would want to go.

DECISION OF THE BOARD

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

Ms. Geffert said granting the variances would not be contrary to the public interest because the public interest would be served by having signage to direct them to doors and buildings. She said it would observe the spirit of the ordinance because the entire property had been reconfigured to enable the use and the signs just pointed to the use. She said substantial justice would be done because it would serve the applicant's interest in pointing out to users of the facility the entrance and/or building in which the headquarters existed and would not divert them in other directions. She said the values of surrounding properties would not be diminished because the signs looked good

and did not misdirect users, so they would consequently enhance the values of surrounding properties. She said literal enforcement of the ordinance would result in an unnecessary hardship, noting that there was a headquarters sign that faced Hodgdon Way and the addition of a parapet sign. She said the applicant made the case of the driver's inability to see the facility in the building from Hodgdon Way, which was a hardship that the sign would alleviate. She said it would not harm any other people. She said it was less hardship but some hardship on the irregular signage on the north facing wall where one parapet had a sign and the other didn't, so there was some hardship that didn't seem to be counterbalanced by any public hardship. She said those special conditions allowed for the granting of the variances and support that the property could not be reasonably used in strict conformance with the ordinance. Mr. Mattson concurred and added that it would not alter the essential characteristics of the neighborhood in that Gateway Corridor District and the building had no street frontage on the bypass, so because of the way it was oriented, it wouldn't be possible to adhere the sign to the façade facing the street.

Mr. Rossi said he would support the motion because he thought it was to the public good that a company like ConvenientMD was expanding its footprint and making its headquarters there and that it showed corporate pride in what they were doing. Mr. Rheaume said he would also support the motion, although he still had reservations about the nature of the signage. He said he hoped the applicant would take that into consideration and realize that it was for their own benefit that people would not come into their headquarters for the wrong reasons.

*The motion **passed** by a unanimous vote of 7-0.*

III. OTHER BUSINESS

There was no other business.

IV. ADJOURNMENT

The meeting was adjourned at 10:08 p.m.

Respectfully submitted,

Joann Breault
BOA Recording Secretary