

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

7:00 P.M.

March 19, 2024

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

MEMBERS EXCUSED: Thomas Rossi

ALSO PRESENT: Stefanie Casella, Planning Department

Chair Eldridge called the meeting to order at 7:00 p.m. She stated that New Items E through I would be discussed at the March 26 meeting. She welcomed new member Thomas Nies.

I. APPROVAL OF MINUTES

A. Approval of the February 21, 2024 minutes.

*Mr. Mannle moved to **approve** the February 21, 2024 minutes as submitted, seconded by Ms. Record. The motion **passed** unanimously, 6-0, with Mr. Nies and Chair Eldridge abstaining.*

II. OLD BUSINESS

Alternate Ms. Record took a voting seat and Alternate Ms. Geffert recused herself.

- A.** The request of **Friends of Lafayette House in care of Melanie Merz (Owner)**, for property located at **413 Lafayette Road** whereas relief is needed to construct an attached caretakers unit to the existing residential care facility which requires the following: 1) Variance from Section 10.520 to allow a building coverage of 20.5% where 20% is allowed; 2) Variance from Section 10.331 to extend, enlarge, or change the lawful nonconforming use without conforming to the Ordinance; and 3) Variance from Section 10.334 to extend the nonconforming use to a remaining portion of the land. Said property is located on Assessor Map 230 Lot 23A and lies within the Single Residence B (SRB) District. (LU-23-208)

Chair Eldridge read the petition into the record. She noted that there were comments from the Planning Department staff and a change to the application, which she read [Timestamp 5:31]. She

said the Staff found the following errors that needed to be corrected on the site plan: 1) the boundary line along Andrew Jarvis Drive should have a front yard setback because it is a secondary front yard; 2) the zoning summary table does not match any of the setbacks shown on the plan; 3) all dimensions on the provided column should reflect the distance from the boundary line to the closest point of the existing or proposed structure and have a corresponding call-out on the plan; 4) the initial request was to construct a 600 sf addition and the applicant did not provide an explanation for the change; and 5) updated floor plans and elevations were not submitted. Without that information and along with the corrections to the site plan, the Staff said there wasn't enough information for the Board to make an informed decision, and they determined that the application is incomplete and recommend postponing it until a time when these documents can be provided.

*Mr. Mannle moved to **postpone** the application until the Planning Staff deems it complete.*

Ms. Casella clarified that those comments were in the packet prior to the newer submission that was sent after the packet went out. She said the applicant did submit new materials and were aware that the Board may not have seen them, and if that was the case, she asked that it be on the record.

Vice-Chair Margeson seconded the motion.

Vice-Chair Margeson said she received the email addition on March 19th but there were still issues about the 600 sf addition and the table. She said it was a significant application and she wasn't comfortable reviewing it under the Planning Staff completely vetted it. Mr. Rheume said he would not vote in favor of the motion. He said he reviewed the additional information and didn't see anything fatal with the first application put forward. He said the applicant changed the lot lines around and he wanted to give the applicant the opportunity to explain it to the Board, and if the Board had concerns, they could then move to postpone. Mr. Mattson said that, from the Planning Department comments, it looked like the boundary line along Andrew Jarvis Drive having a front yard setback was corrected. He said it seemed like there was another change to one of the other setbacks but it didn't change his overall interpretation of the plans. He asked if the table column on one of the site plans was an issue that had not been corrected. Ms. Casella agreed but said she could list them later. She said she still had concerns about the updated table but didn't think it should hold the application back. She said there would need to be conditions attached to an approval, however. She said the Board could approve what was submitted subsequent because it's on the record, but there were other changes that did not equal what the Staff was asking for, so there were still errors in the new submission. She asked that it be postponed until the April meeting due to noticing issues. There was further discussion. [Timestamp 10:14]

*Mr. Mannle **amended** his motion and moved to **postpone** the application until the April 16 meeting. Vice-Chair Margeson seconded.*

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

SPEAKING TO THE PETITION

[Timestamp 13:50] Attorney Chris Mulligan was present on behalf of the applicant, along with the project engineer Joe Coronati and board members of the Friends of Lafayette House. He reviewed the petition and noted that the site plan had not really changed but that the proper front yard and secondary front yard setbacks were not accurately depicted. He explained that the property had a Lafayette Road address but no frontage on it and that there was frontage on Andrew Jarvis Drive but no access from it, so the front yard setback should be on Lafayette Road and the secondary front yard setback should be on Andrew Jarvis Drive. He said the side yard setback of 10 feet was the one that most impacted the project because that was where the proposed addition was and that the addition was well within the setback. He said the relief they needed was to expand a preexisting nonconforming use and building and that the addition would go a bit over the 20 percent building coverage requirement. He said the facility had existed for 40 years and a modest caretaker quarters for the onsite caretakers was proposed to be built. He said the new quarters would be included in the 13 bedrooms, 12 for the residents and one for the onsite caretaker. He said there would be a weekend respite staff to replace the caretaker and the plan was to move the weekend respite caretakers into the 13th bedroom that was presently housing the caretakers and move the caretakers into the proposed new unit. He said the number of rooms would not increase but that the caretaker's unit would be additional living space that would have no impact on the neighbors. He then reviewed the variance criteria and said they would be met. Regarding the discrepancies on the floor and site plans on how large the addition would be, he said the floor plans were dimensioned internally to be just under 600 square feet. He said when the plan was originally submitted, the property had not been surveyed and they submitted information based on the City's tax maps. He said the Planning Department felt that the applicant was close enough to the building coverage requirement that they wanted a survey, so when the applicant did the survey, they dimensioned the addition so that the exterior walls and corners would be dimensioned on the plan.

[Timestamp 29:04] Mr. Rheume said there was nothing in the ordinance that was called a group home and asked if it was a residential care facility. Ms. Casella agreed. Mr. Rheume said there was no previous history found and asked how the use came about. Attorney Mulligan said he didn't know but submitted the original subdivision plan, which indicated that the property was conveyed by someone to the Great Bay School, after which a nonprofit took it over. He believed that the building was acquired for the present purpose. Mr. Rheume said the history indicated that the building was used for this purpose from circa 1984. Attorney Mulligan agreed. Mr. Rheume said it was not permitted in the SRB District if it had more than five residents, and the change in the lot coverage was a result of taking a survey. Ms. Casella said the 20.4 percent for lot coverage was rounded down to 20 percent. It was further discussed.

Mr. Nies confirmed that there would not be additional residents at the facility but just a more modern and separate caretaker's unit. He said in the description of the property, Attorney Mulligan referred to a separate caretaker's apartment that will make living arrangements easier and more desirable for the house manager and staff. In the description of meeting the variance criteria for substantial justice, he said Attorney Mulligan referred to it as necessary to ensure the continued successful operation. He asked Attorney Mulligan to further elaborate. Attorney Mulligan said

obtaining staff was a challenge and they wanted to keep the excellent staff they had, and improving the property would allow them to do that and was necessary.

Vice-Chair Margeson asked what would happen with the existing caretaker space. Attorney Mulligan said it would be one of the existing 13 bedrooms that would be used by the weekend respite staff. Mr. Mattson asked about the jog at the corner near Jarvis Drive and if it was the only portion that was considered frontage as opposed to the whole lot line behind the two residences that were listed as a side yard. Mr. Coronati agreed and said the legal frontage was Andrew Jarvis Drive and that it came down to where the sides and rears were. He said that was the reason the table was incorrect and that they would correct it. Mr. Mattson asked if there was only one frontage. Mr. Coronati said the addition was about 37 feet away from the side setback. Mr. Mattson asked if the 10-ft side yard setback was correct. Attorney Mulligan said they would not need relief from it because that part of the structure would not be expanded.

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 asked Ms. Casella if the facility had ever applied for or received a variance for its nonconforming use. Ms. Casella said it wasn't on record.

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

- 1. The facility shall be limited to 12 care residents or residents under care; and*
- 2. The applicant shall provide updated plans to the Planning Department reflecting appropriate setback requirements for the project.*

Mr. Mattson seconded.

[Timestamp 40:45] Mr. Rheume said that, in terms of the actual structure and as the Planning Department staff indicated, the applicant did put forward that they were slightly above the 20 percent maximum. He said they were still below it and it was based off a surveyed result, and he was confident that it would be accurate and not an issue that would cause the applicant to return before the Board. In terms of the setbacks, he said there was some confusion about a front yard and side yard and so on, and the applicant through the revision process should have been more diligent but he felt that what the applicant was asking for in terms of an addition was far away from the setbacks. Regardless of the orientation, he said there was no concern that the applicant would be building the addition and creating a future problem that would have to come back to the Board. He said it was not a permitted use in the zone but there was a long history of it being there. He asked if there was a provision back in 1984 or if something was allowed to support this type of facility that

negated it coming before the Board. He said the applicant was not asking to intensify. He said he included his conditions so that the use would continue that way and the extra room would be for the caretaker, and he wanted to ensure that there was something on record that the facility is still limited to the initial patients and that the approval was to add on more potential for the caretakers.

Mr. Rheame reviewed the criteria and said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said the addition would be on the back end of the property and not visible from Andrew Jarvis Drive, and nothing would affect the overall feel of the structure. He said it was a use that had been there a long time and the neighborhood had integrated itself around it, and there was nothing about the unpermitted use that was negative toward the neighborhood. He said granting the variances would do substantial justice because the public would not lose anything that would outweigh the benefit to the property owner in having that capability still in the community. He said it would not diminish the values of surrounding properties because it was a small addition and well within the required setbacks, it was not visible to the neighbors, and the use was a longstanding one that had not demonstrated any impacts to the neighborhood. Regarding hardship, he said the unique factor was that it had been a long-term use. He said the Board didn't know the variance history for it but they did know that it was represented at the time the property was subdivided and there was clear intent that the group home use was part of the original concept. He said that was unique and why this parcel did not represent the zoning as a whole, which was a hardship. He said the use is a reasonable one because the intensity of the use was not being increased and it was a modest addition that would provide better caretaker accommodations. Mr. Mattson concurred and said the main reason he supported the motion was because the variance requested was for a use that has always been in place for the structure and will not get more intense. He said it was an existing nonconforming use coming before the Board for a modification to a building, but the addition didn't need any dimensional relief, so it made a lot of sense to support it.

Vice-Chair Margeson said she would not support the motion for the same reasons she voted to continue the application. She said the table was not correct in the site plan, and according to the Staff Memo, the applicant was close to needing a dimensional variance. She said that, before the Board voted on applications, they needed have clean submissions and make sure there were not any errors in any of the applicant's materials. Mr. Mannle said he also could not support it because he and the Planning Staff had no idea whether the applicant received a variance or approval from any of the other land use boards for a nonconforming use. Chair Eldridge said the fact that the facility had been there for 40 years and there were no minutes from the meeting was a moot point, and if the Board denied the application because they wanted more information, they could place the applicant in a Fisher v. Dover situation, She said she could postpone the petition instead of denying it. Mr. Mattson said approving the current application would resolve the previous missing history because it would now have an approved nonconforming use. Mr. Mannle said approving the addition would not approve a nonconforming use, it would only acknowledge it.

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

III. NEW BUSINESS

Alternate Ms. Geffert took a voting seat.

- A. The request of **Kerrin J. Parker Revocable Trust of 2012 (Owner)**, for property located at **86 Haven Road** whereas relief is needed to construct an addition to the existing structure which requires the following: 1) Variance from Section 10.521 to a) allow a 9 foot front yard where 10 feet is required by front yard averaging; b) to allow a building coverage of 29% where 20% is allowed; and 2) Variance from Section 10.321 to allow of nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 206 Lot 27 and lies within the Single Residence B (SRB) District. (LU-23-192)

SPEAKING TO THE PETITION

[Timestamp 53:13] Attorney Derek Durbin was present on behalf of the applicant along with the owner Kerrin Parker. He reviewed the petition, noting that the property was oddly shaped and small compared to nearby ones, and was in a unique setting. He said the requested second floor was for adequate headroom and more functionality of an additional bathroom and bedroom. He said the applicant also wanted to add a farmer's porch on the front. He reviewed the criteria.

Vice-Chair Margeson asked if the house was crooked. Ms. Parker said there was a sidewalk to Little Harbor that fronted half of the house, so the street ended halfway down and the sidewalk started, making the house a little crooked. Vice-Chair Margeson asked about the average front yard setback calculation of 12 feet. Attorney Durbin said it was 10 feet but the house was currently based on where the steps went to 18 inches or above grade, so it was 12 feet. Vice-Chair Margeson said the packet showed that it was 8.1 feet. Attorney Durbin said it really wasn't 8.1 feet. Ms. Geffert asked how close the porch would be to the sidewalk. Ms. Parker said the house dropped back four feet and the front entry was the closest to the sidewalk, so the porch would not come in any closer to the street. Ms. Geffert said the plans and the zoning map didn't show the sidewalk. Ms. Parker said the sidewalk curved away from the house. Ms. Geffert said she wanted to ensure that the sidewalk would not be adversely affected. Chair Eldridge said the new farmer's porch wouldn't come out any more than the existing top stoop of the stairway. Mr. Nies said the site plan showed that the existing setback was 12 feet but the letter said the revisions would lead to one foot farther than the existing setback. Attorney Durbin said he made a drafting error that may have been related to the 10-ft calculation and that it would really be three feet farther than existing at that one side. Mr. Rheume said the pathway leading up to the house's front entrance would be three feet shorter. Attorney Durbin said there would be stairs, and at the closest point, the setback would be three feet closer. Ms. Parker said the deck would only be three feet and the steps would be in the same footprint as the porch, so they would not be coming more forward. Mr. Rheume asked why there was a 3-ft setback. Attorney Durbin said the site plan didn't show the front steps but only the yellow part on the site plan, which was the footprint of the house before the steps, so the steps actually stepped out. Mr. Rheume then said 12-ft existing on the plan wasn't correct. Attorney Durbin said it was shown

as a block and he couldn't distinguish if it was intended to depict the front steps. He said the farmer's porch would be nine feet from the property boundary and they believed that the existing condition was 12 feet to the 18" mark of the front steps. He said it wasn't a good site plan and there was a lot of history behind it, but they measured from the 18" point to come up with the twelve feet. Mr. Rheume said something was sticking out three feet farther than it used to, and he asked how much closer it would appear to people walking down the street. Chair Eldridge said the applicant said they were keeping the steps as they were but changing the materials. Mr. Mattson said there was a landing in the existing situation and no landing in the new plan, just steps to the porch.

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 said he wasn't in favor of moving forward with the application because he didn't think the Board understood what was proposed. He suggested postponing it and requiring a resubmission. The Board discussed a date for the postponement.

Vice-Chair Margeson moved to re-open the public hearing to ask the applicant for a postponement date. Ms. Geffert seconded.

Attorney Durbin said he didn't know if a surveyor would be willing to just do the front boundary without doing the others. It was further discussed and decided that the petition would be continued to the April 16 meeting.

There was no public comment, and Chair Eldridge closed the public hearing. There was further discussion. [Timestamp 1:22:50]

Vice-Chair Margeson moved to continue the application to the April 16 meeting, with the direction to the applicant to provide accurate measurements of the front yard setback as they exist currently and as they would be proposed, which was driving the variance request after the construction.

Mr. Mannle seconded the motion. The motion passed unanimously, 7-0.

Mr. Rheume recused himself from the following petition, and both alternates took voting seats.

- B.** The request of **DFG I LLC (Owner)**, for property located at **750 Lafayette Road** whereas relief is needed to construct a freestanding Automated Teller Machine (ATM) which requires the following: 1) Variance from Section 10.1530 to allow an ATM in a freestanding structure. Said property is located on Assessor Map 244 Lot 8 and lies within the Gateway Corridor 1 (G1) District. (LU-23-194)

SPEAKING TO THE PETITION

[Timestamp 1:26:30] Keith Coven was present on behalf of the applicant and reviewed the petition. He noted that the ATM could not be attached to the building because traffic patterns and a fire lane had to be maintained and there was an existing use inside the building, so they were proposing that the ATM be placed in a landscaped island. He noted that there was an existing ATM for a different financial business on the other side of the building, so the proposed location was the only one on the site that would work. He reviewed the criteria and said they would be met.

Vice-Chair Margeson asked what would happen to the other ATM. Mr. Coven said it would remain. Vice-Chair Margeson said the zoning ordinance was clear that the standalone ATM was not allowed. She said the applicant said the hardship was that the ATM would interfere with the building's design and other tenants in the building, and she asked what other hardship there would be. Mr. Coven said they would have to redesign the site and do site improvements. Vice-Chair Margeson asked if there was a place to put the ATM in the building's interior. Mr. Coven said the ATM was a drive-thru one and the other ATM belonged to someone else.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DISCUSSION OF THE BOARD

[Timestamp 1:32:15] Mr. Mattson said he didn't really have a problem with the project but thought the Board had to consider the literal enforcement of the ordinance section in question and it wasn't clear to him why freestanding ATMs were not allowed. Ms. Casella said she thought it had to do with traffic patterns and the ATM being an accessory structure. Vice-Chair Margeson said the Board had a similar application before where the ATM was an accessory use but without a principal building or use because no bank was attached to it. She said the ordinance wanted unattended electronic devices to be covered and closed for the safety of pedestrians and bank users safety and to prevent crimes. Chair Eldridge said she didn't have a good idea of a traffic pattern of if the ATM would be covered and she said she wasn't getting a full picture of what was being requested. Vice-Chair Margeson agreed and said there was no rendering of exactly where the ATM would be or how it would look in place. She thought the Planning Board would address it because it was a busy site. Mr. Nies said the previous Board actions in 2012 approved a one-lane drive-thru facility, and he asked if the applicant needed a similar approval. Ms. Casella said that assuming that the proposed use is located on that single lane, it would be an add-on and would go through site plan amendment, so there would be a review of the traffic pattern and any alterations as a result of the ATM installation. Vice-Chair Margeson said there were missing details and that she would be unlikely to support the petition. She noted that the ATM provision was extremely detailed in the ordinance and any deviation from it had to demonstrate real hardship, which she did not think the applicant did. She suggested continuing the application so that more information could be provided.

DECISION OF THE BOARD

*Mr. Mattson moved to **grant** the variance for the application as presented, seconded by Ms. Geffert.*

Mr. Mattson said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said the additional ATM would not alter the essential character of the neighborhood or threaten the public's health, safety or welfare or otherwise injure public rights. He said the location of the ATM would be as close to being attached to the building as it could be, which was in the spirit of the ordinance, but due to the existing structure and location of the travel lane, the ATM was just barely not attached. He said it would not conflict with the implicit and explicit purposes of the ordinance. He said granting the variance would do substantial justice because the benefit to the applicant would not be outweighed by any harm to the general public or other individuals. He said the other bank had an ATM and the applicant's bank did not, so it would be a benefit to the applicant. He said there was no reason to believe that the values of surrounding properties would be diminished. He said literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property that distinguished it from others in the area, and there was no fair and substantial relationship between the general public purposes of the ordinance's provision and the specific application of that provision to the property. He said if the ATM were attached to the building, there would be no variance request, but there was an existing structure on the property that had a glass façade and there was a travel lane, so a fair and substantial relationship did not exist because the ATM would be as close to being an attached one as possible. He said the use was a reasonable one because it was a bank wanting an ATM that someone could drive up to.

Ms. Geffert said that, based on the information presented and the fact that the applicant was going for site plan review, whether the ATM in question satisfied the zoning requirements for a drive-thru facility would be considered separately. She suggested that the Board's approval be conditioned on that site plan review. She said she thought the standalone ATM satisfied other criteria because of the traffic pattern established but didn't want to muddy the waters by saying that it was almost attached. She said it was very close to being attached, however, and that the criteria related to auto access and not creating things beyond the Board's consideration. She said the ATM's proximity to the building did not change its essential character. Chair Eldridge said it was a drive-up ATM and wasn't sure how great a hardship it was, so she was unlikely to support the motion.

*The motion **failed** by a vote of 2-5, with Mr. Record, Mr. Mannle, Vice-Chair Margeson, Mr. Nies, and Chair Eldridge voting in opposition to the motion.*

*Vice-Chair Margeson moved to **deny** the application. She said the variance was contrary to the public interest and the spirit of the ordinance would not be observed. She said the ordinance was very explicit about prohibiting standalone ATMs and the application markedly conflicted with it.*

*Mr. Mannle seconded the motion. The motion **passed** by a vote of 5-2, with Ms. Geffert and Mr. Mattson voting in opposition to the motion.*

Mr. Rheume resumed his voting seat, and Alternate Ms. Geffert took a voting seat.

- C. The request of **Cyrus Beer** and **Erika Beer (Owners)**, for property located at **64 Mt Vernon Street** whereas relief is needed to demolish an existing detached shed and construct a new two-story accessory detached shed which requires the following: 1) Variance from Section 10.573.20 to allow an accessory structure more than 10 feet in height and more than 100 square feet in area a) to be set back 5 feet from the side property line where 10 feet is required and b) to be set back 5 feet from the rear property lines where 19 feet is required. Said property is located on Assessor Map 111 Lot 30 and lies within the General Residence B (GRB) and Historic District. (LU-24-20)

SPEAKING TO THE PETITION

[Timestamp 1:48:40] The applicant Cyrus Beer was present to speak to the application. He explained why he wanted to place a second floor on the shed and move it five feet away from the lot line. He reviewed the criteria and noted that the Historic District Commission unanimously approved the project and that the abutters were also in favor.

Mr. Rheume said there was an odd jog to the property and it looked like the corner of the shed was close to it. He asked Ms. Casella if the applicant had to maintain five feet from the jog. Ms. Casella as they did, as advertised. Mr. Beer said there was a hill that came down and five feet would fit without regrading. He said ten feet would take away some of the backyard space. Mr. Rheume said the advertisement was for 19 feet but the table showed it as 25 feet required. He asked if the 19 feet was based on the height of the structure. Ms. Casella said the correct setback would be 19 feet. It was further discussed. Ms. Geffert asked Mr. Beer to review the hardship again, which he did.

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 variance for the application as presented and advertised, seconded by Ms. Geffert.*

Vice-Chair Margeson said the project would not be contrary to the public interest and the spirit of the ordinance would be observed. She said the Board required that the proposed use must not conflict with the explicit or implicit uses of the ordinance and must not alter the essential characteristics of the neighborhood nor threaten the public's health, safety, or welfare or otherwise injure public rights. She said the public's rights were the movement of light and air and that the applicant could have moved the left and rear yard setbacks more in, but they stated that there were topography reasons that make it difficult and the applicant was improving the setback requirements

off the existing use of the current shed, so she found that the spirit and intent of the ordinance were satisfied. She said substantial justice would be done because the benefit to the application would not be outweighed by harm to the general public or other individuals. She said the house was on a dead-end lot that was irregularly configured, along with a lot of other irregularly-configured lots. She said granting the variance would not diminish the values of surrounding properties because the applicant would bring the shed out of the setbacks as much as possible and improving it would not harm property values in the area. She said literal enforcement of the ordinance would result in unnecessary hardship due to the special conditions of the property that distinguished it from others in the area, and there was no fair and substantial relationship between the general public purpose of the ordinance's provision and the specific application of that provision to the property. She said the proposed use was a reasonable one because a shed is a reasonable accessory use to a house. She said there were special conditions of the property, including the topography that sloped upwards that made the literal enforcement of the ordinance's requiring setbacks for the left and rear yard difficult to comply with. Ms. Geffert concurred and had nothing to add.

Mr. Rheume said he saw a hardship in that the property was burdened on the rear and opposite side property lines by the 1900 decision of the hospital to build right up to the property line. He said he had no concerns with the rear property line but was concerned with the jog and thought the applicant needed to work with his architect to make sure what the dimension was. He thought it would work itself out, however, with the approval process with the City Staff. Mr. Nies said if the petition was approved with a 5-ft setback from the jog, he wanted to ensure that it was clear that the applicant would have to work through the permitting process to have five feet at that corner.

The motion passed unanimously, 7-0.

Alternate Ms. Record took a voting seat and Ms. Geffert returned to alternate status.

- D.** The request of **Ryan Family Trust (Owner)**, for property located at **199 McDonough Street** whereas relief is needed to construct an addition to the existing primary residential structure which requires the following: 1) Variance from Section 10.521 to allow a 9.5 foot rear yard where 20 feet is required; 2) Variance from Section 10.516.20 to allow a 9.5 foot rear yard where 15 feet is required for a rear yard adjoining a railroad right-of-way; and 3) Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 144 Lot 42 and lies within the General Residence C (GRC) District. (LU-24-18)

SPEAKING TO THE PETITION

[Timestamp 2:13:05] The applicant Peter Ryan was present and reviewed the petition. He noted that the addition would not be visible from McDonough Street and the materials would match the existing house. He reviewed the criteria and said they would be met.

Vice-Chair Margeson asked how the porch would be accessed after the addition was put on. Mr. Ryan referred to the diagram to show how a door would be moved to access the backyard. Vice-Chair Margeson said the rear yard setback was going from 8 to 9.5, and given that the porch would not be moved, she asked why there was more of a setback. Ms. Casella said it had to do with the lot angling away. She said the closest corner was 8 feet but would be 9.5 feet where the addition was going, so it would still be nonconforming. She said the deck would not factor in because it was below 18 inches and didn't count as a rear yard structure. Mr. Rheume said the drawing didn't show the actual setback for the addition and asked Mr. Beer if he attested that it was 2-1/2 feet, i.e. 7 feet plus 2-1/2 feet equaling 9-1/2 feet to get to the proposed addition at that corner. Mr. Beer agreed. Vice-Chair Margeson noted that there was an existing fence along the back of the property, which was the first time she had seen an application that involved railroad property.

Chair Eldridge opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

Elizabeth Bratter of 159 McDonough Street said she was in favor of the petition because it was not contrary to any of the criteria, which she explained in detail. She said most of the homes in the neighborhood were nonconforming and the addition would not change the railroad setback.

[Timestamp 2:19:40]

SPEAKING IN OPPOSITION TO 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. Nies moved to **grant** the variances for the petition as presented and advertised, seconded by Mr. Mannle.*

Mr. Nies said granting the variances would not be contrary to the public interest and would not conflict with any of the general purposes of the ordinance. He said there was no evidence that there would be an adverse impact on the health, safety, and welfare of the public. He said substantial justice would be done because the benefit to the applicant would cause no harm to the public. He said it was an unusual neighborhood, lot size, and location, and many of the changes would not be visible from the street and possibly not from the neighbors. He said granting the variances would not diminish the values of surrounding properties. He said literal enforcement of the ordinance would result in unnecessary hardship. He said the special conditions included that the lot was unusual, and if the Board insisted on enforcing all the setbacks, the 35-ft deep lot would have 15 feet in the middle that could possibly be built on. He said the proposal was making a minor change to the property and the conditions of the lot imposed a hardship, so there was no reasonable reason to disapprove the petition and create an unnecessary hardship to the owner. Mr. Mannle concurred and said the lot was the hardship. He said it was slightly bigger than any house lot in the south end.

Mr. Rheaume said he agreed with the motion. He said the fact that the back setback was up against an open area of the railroad and more open area behind it was also a hardship and was a unique characteristic. He said there was no concerns about light and air to neighboring properties because the applicant's proposal for a small one-story addition was modest and in keeping with that. He said the 15-ft setback was from a railroad right-of-way and that he had yet to figure out why the ordinance included that requirement. He said the Board ran into that situation before and the variance was granted, but he felt that it was a needless requirement and said he was not in favor of considering that to be a negative for the application.

The motion passed unanimously, 7-0.

THE FOLLOWING ITEMS WILL BE HEARD ON TUESDAY, MARCH 26, 2024

- E. The request of **Cherie A Holmes and Yvonne P Goldsberry (Owners)**, for property located at **45 Richmond Street** whereas relief is needed for the following: 1) Variance from Section 10.515.14 to install a mechanical unit 8.5 feet from the side property line whereas 10 feet is required. Said property is located on Assessor Map 108 Lot 18 and lies within the Mixed Residential Office (MRO) and Historic District. (LU-24-19)
- F. The request of **Atlas Commons LLC (Owner)**, for property located at **581 Lafayette Road** whereas relief is needed for after-the-fact installation of an awning sign which requires the following: 1) Variance from Section 10.1251.20 to allow a 32 square foot awning sign whereas 20 square feet is allowed. Said property is located on Assessor Map 229 Lot 8B and lies within the Gateway Corridor 1 (G1) District. (LU-24-1)
- G. The request of **Lonza Biologics (Owner)**, for property located at **101 International Drive** to add four (4) above ground storage tanks which requires the following: 1) from Section 308.02(c) of the Pease Development Ordinance to allow an above ground storage tank (AST) exceeding a 2,000 gallon capacity per facility. Said property is located on Assessor Map 305 Lot 6 and lies within the Airport Business Commercial (ABC) District. (LU-23-108)
- H. The request of **Henrik Edin and Kathleen Edin (Owners)**, for property located at **85 Pinehurst Road** whereas relief is needed to construct a second floor addition to the existing attached garage which requires the following: 1) Variance from Section 10.521 to allow a) a 4.5 foot side yard where 10 feet is required; b) a building coverage of 29% where 25% is allowed; 2) Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance; and 3) Variance from Section 10.515.14 to install a mechanical unit 2.5 feet from the left side property line whereas 10 feet is required. Said property is located on Assessor Map 221 Lot 73 and lies within the General Residence A (GRA) District. (LU-24-22)
- I. The request of **Susan Javurek and Michael Roche (Owners)**, for property located at **45 Kent Street** whereas relief is needed to demolish an existing 1-story addition,

reconstruct a two-story addition and add a deck on the rear of the existing residential structure and relocate a bulkhead which requires the following: 1) Variance from Section 10.521 to a) allow a 5.5 foot left side yard where 10 feet is required; and b) to allow a building coverage of 35% where 25% is allowed; and 2) Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 113 Lot 145 and lies within the General Residence A (GRA) District. (LU-24-25)

IV. OTHER BUSINESS

There was no other business.

V. ADJOURNMENT

The meeting adjourned at 9:30 p.m.

Respectfully submitted,

Joann Breault
BOA Recording Secretary