

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

7:00 P.M.

February 19, 2025

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

MEMBERS EXCUSED: Phyllis Eldridge, Chair; Thomas Rossi

ALSO PRESENT: Jillian Harris, Planning Department

Vice-Chair Margeson was Acting Chair. Alternate Jody Record took a voting seat for the evening.

I. APPROVAL OF MINUTES

A. Approval of the January 22, 2025 meeting minutes.

Mr. Nies requested that on page 3, first paragraph, the sentence “Mr. Nies said the Board did not have that information” be changed to “Mr. Nies noted that information was not carried over to the summary table.” Mr. Rheame requested that the sentence on page 8 that reads “Mr. Rheame noted that the packet showed it as a right yard encroachment instead of a left yard one” be changed to “Mr. Rheame noted that the Staff Memo showed it as a right yard encroachment instead of a left yard one.” On page 9, first full paragraph, Mr. Rheame requested that the sentence “Vice-Chair Margeson said the packet showed a stamp for the Rockingham County Registry of Deeds from September 1977, so it was recorded” be changed to “Vice-Chair Margeson said the lot line adjustment plan showed a stamp of the Rockingham County Registry of Deeds from September 1977.” On page 10, top paragraph, Mr. Rheame asked that the sentence “Mr. Rheame said he supported the motion, noting that the front porch was an open structure with a lot of open space around the home and property and was something that he thought the Board would have easily allowed” have the words ‘prior to construction’ added at the end.

*Mr. Mattson moved to **approve** the minutes as amended, seconded by Ms. Record. The motion **passed** unanimously, 5-0, with Mr. Mannle absent.*

B. Approval of the January 28, 2025 meeting minutes.

*Mr. Rheame moved to **approve** the minutes as submitted, seconded by Mr. Mattson. The motion **passed** unanimously, 5-0, with Mr. Mannle absent.*

Mr. Mannle arrived to the meeting at 7:07 p.m.

II. OLD BUSINESS

A. 84 Pleasant Street - Rehearing Request (LU-24-219)

[Timestamp 7:39] Acting-Chair Margeson said that the Board previously had concerns about some photos and illustrations referenced that were not included in the packet, so it was continued to the February meeting. She said if the Board were to grant the rehearing, it would be scheduled at a future meeting. Mr. Rheume noted that the Board granted almost all of the relief but the abutter requested a rehearing on a granted variance, Item 2B, the 4-story addition of 50-ft height on the Church Street elevation. He said the appellant's argument was that they were not clear on the Board's reasons for granting that variance. Mr. Rheume said it was a complicated project and that the Board tried to make a motion that was as clear as possible, but he thought there was a potential that their decision-making was not as clearly articulated as it could have been. He said the Board either make Item 2B more clear or perhaps revisit the issue entirely. Mr. Nies agreed. He said he reviewed the video and thought there was a legitimate concern that the Board did not clearly elaborate on how the criteria were met on Item 2B with respect to Church Street and the 50-ft height. Mr. Mattson said he was inclined to only hear Item 2B. Mr. Mannle said it should be specific to what the appellant was requesting, which was strictly Item 2B.

*Mr. Nies moved to **grant** the request for rehearing on only Part 2B at the March 18 meeting. Mr. Rheume seconded.*

Mr. Nies said he did not think the record clearly established the Board's rationale for granting the variance nor clearly described the special conditions of the property that warrant the variance.

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

B. 222 Court Street – Extension Request (LU-23-12)

[Timestamp 15:54] Acting-Chair Margeson said the extension request for a variance was granted in February 2023 for the installation of a mural and a sign, and the approvals were scheduled to expire in 2025. She said the applicant asked for an extension because the permit had not yet been obtained, and there was a letter in the packet describing the reason for the request, which was funding that would allow the applicant to move forward with the project.

*Mr. Mannle moved to **grant** the extension request for one year, seconded by Mr. Rheume.*

Mr. Rheume said he was typically cautious about granting extensions, but in this case the applicant had a good reason in that they were not for profit and it took time to collect funds to execute the sign and mural. He said the extension request for another year was reasonable.

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

Mr. Rheume recused himself from the following petition. The applicant's representative said they would move forward with the petition, even though there were only five voting Board members.

- C. The request of **361 Hanover Steam Factory LLC (Owner)**, and **Hampshire Development Corporation LLC (Applicant)**, for property located at **361 Hanover Street** whereas relief is needed to expand and renovate the existing commercial building and convert it to multi-family residential and to construct three new multi-family residential buildings which requires the following: 1) Variance from Section 10.642 to allow residential principal uses on the ground floor of the buildings; and 2) Variance from Section 10.5A41 - Figure 10.5A41.10D to a) allow for "Apartment", "Rowhouse" and "Duplex" building types where they are not permitted; and b) allow a ground floor height of 10.5 feet where 12 feet is required. Said property is located on Assessor Map 138 Lot 63 and lies within the Character District 5 (CD5) District and the Downtown Overlay District. (LU-24-196)

SPEAKING TO THE PETITION

[Timestamp 20:22] Attorney John Bosen was present on behalf of the applicant, with the owners Steve Wilson and Shane Forsley and project engineer John Chagnon. Attorney Bosen said the project still had to go through full site review with the Planning Board, the Technical Advisory Board (TAC), and City Staff, where modifications would be made based on their input. He reviewed the petition and criteria.

[Timestamp 29:43] Mr. Nies asked if the project still included a subdivision into two lots, and Attorney Bosen agreed. Mr. Nies said the Board previously saw a lot of different numbers related to the number of apartments and now saw a range of apartments from 40 to 48. He said the floor plans showed 42 units, and he asked the applicant to elaborate more on the added six units. Mr. Forsley said Buildings B and C had a set number of units and Building A's current layout was subject to minor changes based on the building's floor plates. He said if the unit layouts changed, they would know they had 71 parking spaces that would support a maximum of 42 units, with some of the unit sizes increased. Mr. Nies asked if the applicant would have enough parking spaces if they went up to 48 units. Mr. Forsley agreed and further explained it. Mr. Nies clarified that the number of units was changed from 42 to 48 and the size of the units in Building A was changed, and the applicant would not consider another floor added to Building A. He said the proposal indicated that there were 71 parking spaces, yet the September traffic study that was previously submitted to the Board indicated that there were 60 parking spaces. Mr. Nies said there were now potentially more cars than there were when the parking study was completed, so he wanted to know if the results of that study were still valid. Mr. Chagnon said they submitted the memo from the traffic engineer that identified the trip generation and that it was not a parking study. He said the project-generated traffic was based on construction of a 51-unit multi-family residential development and was therefore based on more units than now proposed. He said parking in Portsmouth was based on unit size and had a sliding scale, so there could be a case where more units that are small require less parking under the ordinance. He said there would be less traffic proportionally going forward. Mr. Nies said he did not agree because the floor plan showed 42 units in the building but the summary indicated 45 units. He asked which number it was. Mr. Chagnon said he knew that the numbers given as the totals were scrutinized. Mr. Nies said the heights of adjacent buildings were compared to the project's building heights, but it seemed like there was a bit of a difference in that the heights

of the adjacent builds are shown to the peaks whereas the heights of the applicant's buildings are shown to the zoning ordinance height. Mr. Forsley said that he first wanted to answer Mr. Nies' question on the number of parking spaces for Building A. He said it would be 42 spaces in the interior and three spaces on the exterior. In respect to building height, he said their measurements were taken to the peak without calculating the true midpoint. He explained that they went around the perimeter of the known buildings and took pictures of the peaks of some of the different properties. Mr. Nies asked if the Board should then not be comparing peaks to peaks. Mr. Forsley said if the Board wanted to reference the peaks on his buildings vs. the peak on another building, it could be considered. Mr. Nies said the packet indicated that the applicant was requesting approval of the variance to allow for ground-floor commercial use of the buildings and that it would not adversely impact the health, safety, and welfare of the public, but the applicant was not really asking for ground-floor commercial uses. Attorney Bosen said it was a typo because they were asking for a variance from the requirements to put commercial uses on the ground floor. Mr. Nies referred to the renderings of Building D, saying that a hip-topped mansard roof had one height but a flat-topped mansard roof had a different height and that some of the renderings made it difficult to tell which it was. Mr. Forsley said they were hip-topped mansard roofs and qualified and that it was in the ordinance.

[Timestamp 42:47] Acting-Chair Margeson said the applicant's narrative indicated that the unit calculation was 26 to 34 for Building A, but the floor plans said it was 24 units in Building A. She asked the reason for the discrepancy. Mr. Forsley said there were two units on the first floor as well. He said on the floor plans there were eight units per floor, but they had the parking to support up to 32 units in Building A, so there was a floor plate with emergency access and egress, etc. that could support those unit counts. Acting-Chair Margeson asked if the variance request for 10.5' was also applicable for Buildings B, C, and D. Attorney Bosen agreed. Acting-Chair Margeson asked if the rowhouse/duplex/apartment variance requests were being requested because in CD5, there would not be those kinds of building types because commercial is required on the ground floor. Attorney Bosen agreed. It was further discussed. Mr. Nies asked for the ordinance reference that described the hip-topped mansard roof provision. Ms. Harris said it was included in the definitions. Attorney Bosen said that was a question for the Planning Board. Mr. Mattson asked if the Planning Department Staff reviewed the mansard hip roof condition and determined that no variance was needed. Ms. Harris agreed and said it was determined to be a hip-topped mansard roof, based on the application's architectural drawings. The mansard roof definition was further discussed.

Acting-Chair Margeson opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

[Timestamp 53:05] Elizabeth Bratter of 159 McDonough Street explained why she thought the application was filled with errors and misrepresentations and suggested a few conditions: that the Building A's current roof style and height should not be any longer than 60 feet, that Building C's roof style, front length and height could not be changed, and that Building D would be no longer than 40 feet and would have no mansard roof.

[Timestamp 57:39] Attorney John Lyons representing the Hill Hanover Group LLC was present. He said he submitted a letter setting on the basis of his client's rejection and the reason why the applicant failed to meet all the criteria, including specifically whether it was 42 or 48 units and the fact that the access down to the right-of-way on Hill Street would negatively impact the values of his client's properties. Acting-Chair Margeson asked if Hill Street was a two way street. Attorney Lyons said it could be. Acting-Chair Margeson asked if the easement extended through the parking lot of 361 Hanover and egressed onto Hanover Street. Attorney Lyons said he submitted a copy of the condominium plan that noted that the easement granted to his client went through the parking lot to Hanover Street and actually ran through the middle of what is described as Building D, but that was another issue that he hoped could be resolved. Acting-Chair Margeson said the Board noticed during their site walk that there was private parking on Hill Street. Attorney Lyons said the parking belonged to his client's buildings tenants who had parking spots assigned to them. Acting-Chair Margeson asked if the units were rentals, and Attorney Lyons agreed and said the value of the rentals included the parking in the back. Acting-Chair Margeson asked if the City maintained the private right-of-way. Attorney Lyons said the City did some maintenance as well as his client. Acting-Chair Margeson asked if the tenants would use the easement into the parking lot to exit onto Hanover Street. Attorney Lyons said the properties were owned by an attorney and that the tenants and occupants of the three buildings had continuously used the right-of-way down through the parking lot and the mill building, which was one of the reasons why the site plan documented that right-of-way. Acting-Chair Margeson asked if Attorney Lyons' client could work out the easement issue through the parking lot that would run down to Building D. Attorney Lyons said he would be filing suit to protect that easement but hoped that it would be able to be resolved, especially the location of where the easement went through what was the former parking lot. It was further discussed.

[Timestamp 1:03:20] Mr. Mattson asked how denying the variance requests would solve Attorney Lyons' problem. He said the applicant could build something similar without the variances. Attorney Lyons said he wanted to bifurcate the easement issue and that his client's objection to the variance request was the use of Hill Street for ingress and egress and how that would negatively impact his property values, whether it was parking or the amount of traffic. He said a condition stating that Hill Street could not be used for ingress and egress would satisfy his client's concerns.

Nicole Lapierre of 44 Rock Street said nothing in the application had really changed and she thought the applicant was holding the proposed Plan A with the monolithic building over the public's head. She said three-quarters of the land surrounding the Heinemann Building was City land. She said the project would negatively impact the neighborhood's character and home values.

Kate Waldwick of 30 Parker Street said the lot could be developed in accordance with the character of the neighborhood and that both plans the applicant submitted did not meet that goal. She said Islington Creek was quiet and safe and not overly developed, and the proposed density would affect that character. She said there would be about 96 added vehicles onto the tiny street and that no accurate traffic study was done. She said the applicant wanted to cherry pick zoning.

Marcie Vaughan of 407 Hanover Street said the applicant's argument on hardship was based on the fact that 361 Hanover Street was improperly zoned. She said a property's zoning was not a special

characteristic that causes undue hardship. She said the City should have rezoned the property but didn't, so the applicant was able to exploit a procedural nuance to lock in that improper zoning.

Robin Husslage of 27 Rock Street (via Zoom) said she was supportive of the proposal development but thought it should meet the five criteria or have conditions stating that the applicant should replace the mansard roofs on Buildings A and B with ones consistent with the neighborhood and should increase the modulation of the row house so that it did not appear to be an 82-ft long monolithic building. She said the callout of several surrounding buildings missed a lot of shorter building heights. Elizabeth Bratter then gave the Board documentation on Ms. Husslage's behalf.

Attorney Bosen said the neighborhood residents were emotional but most of their comments ignored his client's right to develop the property in a manner consistent with the ordinance. He said there was nothing underhanded and that all the issues brought forth from the neighborhood would be presented before TAC and the Planning Board. He said that evening's issue was whether the applicant would put ground-floor commercial or residential, and there were no comments about that. He said Attorney Lyons' conditions were complicated, noting that the attorney's client could not enter his property without getting onto the applicant's land and that he could not find any deed stating that Attorney Lyons' client could legally do so, but it was not the Board's purview.

Second Time Speakers [Timestamp 1:33:50]

Kate Waldwick said the first plan was better because it had fewer units. She said commercial properties were struggling, so having more commercial property could increase the supply of commercial availability and make residential more affordable. She said first-floor residential would also increase density and affect character.

Marcie Vaughan said the neighborhood residents were challenging the legality of the applicant's request and that the issue was not commercial vs. residential but was the character of the neighborhood. She said the development would be too dense for the neighborhood and asked that the density be capped at 30 units if the variances were granted.

Elizabeth Bratter said the Downtown Overlay District should be removed and that the building lengths should be made shorter.

Attorney Bosen said the building used to be occupied by the Heinemann Company that had over 100 employees coming and going every day for years and that what his client proposed was less.

Nicole Lapierre said it wasn't a good comparison because Heinemann's employees came and left at the same time every day, the weekends were quiet and the parking lot was open to the public.

No one else spoke, and Acting-Chair Margeson closed the public hearing.

DISCUSSION OF THE BOARD

[Timestamp 1:43:28] Mr. Mattson said the legal situation with the easement was not in the Board's purview. He said he thought that residential would be better than commercial because commercial units created more traffic turnover. He said allowing the 10.5-ft ceiling on the first floor was more favorable than requiring a higher first floor, and he also thought that allowing a duplex or rowhouse was good. He said the applicant could build something that could be considered more detrimental to the neighborhood. He said the requested variances had nothing to do with heights, parking, and so on and that the plan would change when the applicant went before the other boards. He said it would be beneficial to the neighborhood to have more broken-up housing on the parcel instead of a single large building. He said the applicant was making a good-faith effort to improve the project on a big and unique parcel. He noted that the higher buildings would be farther away from the single-family homes. Mr. Nies said the history of the zoning in that area was troublesome but that it wasn't the Board's job to resolve zoning problems or changes in zoning that did not happen. He said some of the comments seemed to imply that the Board was outside its lane by asking detailed questions about the project. He said the Board had criteria and were concerned about the public's health, welfare and safety, light and air issues, and the potential impact of the project on diminishing surrounding property values, and that those things were difficult to understand without having a full understanding of what the project is. He said it had been a complicated process and that the Board had seen multiple versions of the project. Acting-Chair Margeson agreed. Mr. Mannle agreed and questioned the applicant's transition from the most dense CD5 district to the least dense GRC district. Acting-Chair Margeson said the Board did a site walk and had more than enough information, and she thought the variance application was clean. She said the typo Mr. Nies found was not fatal to the application. She said the CD5 zoning was problematic but was nothing that the Board could do anything about. She said the massing and height of the buildings were determined by the CD5 zoning, and no variances were required for height or massing on the properties. She said there was a concern about the rooftops, but the rooftops were all allowed in the CD5 zoning. She said the Board could not shorten the building lengths. She said the applicant had a good argument as to why commercial did not fit into the area. She said first-floor commercial would create more vehicular traffic in and out of the area. She said the difference in floor heights was not a significant ask and that the building types flowed from that variance request. She said she sympathized with the abutters and thought it was a big project in the middle of their neighborhood but it was a problem with the zoning and the Board could not change that. She suggested two conditions: 1) the design and location of the buildings may change as a result of the Planning Board's review and approval, and 2) the property cannot be accessed by the residents of 361 Hanover Street in ingress and egress through Hill Street. She said the legal concerns were not in the Board's purview. She said there were special conditions of the property that created the hardship for not having commercial on the first floor. She said the suggested conditions would deal with the easement on Hill Street, which would benefit the direct abutters. She said the circulation through the property itself and exiting onto Hanover Street could be dealt with separately by rerouting the easement to make sure the easement is still usable by the people on Hill Street. Mr. Mattson said the Board accepted applications as presented but that an approved application could be modified by other boards. He said if the Board tried to dictate the length of the building, it could get overturned in a lawsuit. He said there was nothing the Board could do about the zoning issue but they could grant a variance, which could be used in a case in which the Board felt that the zoning was not quite right for a specific parcel. Acting-Chair Margeson said the Planning Staff recommendation included TAC. Mr. Mattson said he thought residential would be better for the neighborhood than commercial, and it was further discussed. Mr. Nies said the NH Zoning Board of Adjustment Handbook stated that

conditions must relate to the land and are usually designed to remove features of the proposed use that are legally objectionable. He said he did not think that there was a proposed use about access on Hill Street and that Hill Street was not part of the land. He asked if it was a condition that the Board could impose. Acting-Chair Margeson said the condition related to the land that is the subject of the application, and it was as further discussed.

DECISION OF THE BOARD [Timestamp 2:06:55]

*Mr. Mattson moved to **grant** the variances as presented with the following **conditions**:*

- 1. The design and locations of the buildings may change as a result of the Planning Board's review and approval, and*
- 2. The ingress and egress to 361 Hanover Street shall not be made through Hill Street.*

Ms. Harris asked if signage or physical features would block the ingress and egress, and it was further discussed. Mr. Mattson said he would withdraw the second condition.

The **amended** motion was:

*Mr. Mattson moved to **grant** the variances as presented with the following **condition**:*

- 1. The design and locations of the buildings may change as a result of the Planning Board's review and approval.*

Ms. Record seconded.

Mr. Mattson said granting the variances would not be contrary to the public interest, and the spirit of the ordinance would be observed. He said the proposed use must not conflict with the explicit or implicit purpose of the ordinance. He said in this case, the proposed use is residential multi-family homes, and it would not alter the essential character of the neighborhood, threaten the public's health, safety or welfare, or otherwise injure public rights. He said the proposed massing, dimensions, heights, and lengths were allowed by right. Referring to the essential character of the neighborhood, he said there was another home in the area with a height of its original form being restructured and that there were plenty of duplexes within 100 feet of the proposed duplex. He said a lot of details were heard about roof types, but it was a residential home and the Board could not dictate the design. He said granting the variances 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 approving the variances would benefit both the applicant and the neighborhood. He said the values of surrounding properties would not be diminished, noting that there had been no expert testimony but in general, new construction with parking fetched a premium, especially that close to downtown. He said it would be a better use for the property than a parking lot and that having residential homes next to other residential homes would not diminish property values. He said literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property that distinguish it from others in the area, and there is 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, and the proposed use is a reasonable one. He said it was a reasonable use to add residential to a residential neighborhood instead of commercial. He said the Board could express its thoughts about how the area is zoned but it was not in their purview to change the

zoning. He said it did not make sense to have commercial on the property. Regarding the other two variances about the height of the first floor, he said allowing it to be less tall was beneficial. He said the taller height of the first floor was due to the commercial aspect. He said the parcel is on the periphery of the transitions to the GRC district that has duplexes and rowhouses. He said the property's special conditions were that it was an abnormally large lot that has development potential because it is underutilized with the vast surface parking area, and the entire Heinemann Building is a unique aspect. Ms. Record concurred and had nothing to add.

*The motion **passed** by a vote of 4-1, with Mr. Mannle voting in opposition and Mr. Rheume recused.*

Mr. Rheume resumed his voting seat for the evening.

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

SPEAKING TO THE PETITION

[Timestamp 2:24:20] Kyle Bowser was present on behalf of the owners Millport INC and Form Fitness. He reviewed the petition and noted that Form Fitness wanted to expand from the current 1,530 sf space into the adjacent 1,695 sf space. He said it would remain a commercial space and would house the existing workshop into a new yoga studio. He said there would be no exterior changes except for a new window. He reviewed the criteria and said they would be met.

[Timestamp 2:30:45] Mr. Rheume said there were 109 parking spaces total on the lot, and the commercial use is on the end of the lot, whereas a 63-unit apartment building occupies the rest of it. He said the Staff Report indicated that 10 parking spots are required for the expanded business. He asked what the requirement was for the rest of the parking for the property and why the applicant felt that he was still able to find the necessary parking on site for the ten spots required. Mr. Bowser said the parking calculation was based on 94-1/2 parking spaces required for the 63 residential units, and the calculation for 3600 sf of commercial space at 14.4 spaces required. Mr. Rheume concluded that the residential use was about 90 spaces, which left more than 10 spots for the business. He said there were six spots plus a seventh parallel spot that were segregated from the main parking area. He asked if there were concerns with additional parking spots being a bit farther away. Mr. Bowser said the empty parking spots in the back allowed them to get to the 109 spots required for the 3600 square feet for the commercial spaces, along with the 63 residential uses. He said it was a shared use and that the six spots in the back were primarily used for the Pilates business, but the front had always been a mixed use for commercial and residential. He said there were no issues with the parking in the past and that he didn't see any issues in the future.

Acting-Chair Margeson opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Acting-Chair Margeson closed the public hearing.

DECISION OF THE BOARD

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

[Timestamp 2:35:10] Mr. Rheume said granting the special exception would pose no hazard to the public or adjacent properties on account of fire, explosion, or release of toxic materials. He said the nature of the business indicated that none of those would be a concern. He said there would be no detriment to property values in the vicinity or change in the essential characteristics of any area including residential neighborhoods or business and industrial districts. He said the length of Islington Street had a combined mix of residential and business uses and light industrial uses, and the applicant's lot was an example of that. He said it was primarily residential with a small business use on the end and the applicant's request was just an expansion of an existing use that has proven to be very compatible with the residential uses. He said the scale of the building and the size of the structure would not change and that the applicant was simply occupying more of it. He said there would be sufficient parking to meet all the requirements for both uses. He said accessways, odors, smoke, gas, dust, noise, glare, heat, vibration, or unsightly outdoor storage of vehicles or equipment were not concerns. He said granting the special exception would pose no creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity. He said the increase in size of a relatively modest business on a relatively busy road that had all kinds of similar businesses and residential and light industrial uses and the small increase in potential clients for the space would not cause a traffic concern. He said there would be no excessive demand on municipal services including but not limited to water, sewer, waste disposal, police and fire protection, and schools due to the nature of the business. He said granting the special exception would pose no significant increase in stormwater runoff onto adjacent properties or streets because the proposed structure was the same as what was there before. Ms. Record concurred and had nothing to add.

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

III. NEW BUSINESS

Mr. Nies recused himself from the following two petitions.

- A.** The request of **Paula J. Reed Revocable Trust (Owner)**, for property located at **410 Richards Avenue** whereas an equitable waiver is needed for the construction of a garage which requires the following: 1) Equitable waiver for an accessory structure with a 3-foot left side yard where

3.5 feet was previously granted. Said property is located on Assessor Map 112 Lot 10 and lies within the General Residence A (GRA) District. (LU-25-10)

SPEAKING TO THE PETITION

[Timestamp 2:39:42] The applicant/owner Paula Reed was present and explained that she was granted a variance in December 2023 to tear down a garage on her property and build a new one that conformed to the dimensional requirements granted in the approved variance. She said the original variance allowed her a longer and higher pitched garage while maintaining a 3.5-foot right yard side setback. She said the foundation and garage were built and it was discovered that the front corner of the garage encroached four inches into the allowed 3.5' setback and the rear corner encroached one inch into the same setback. She said the request for the equitable waiver from the 3.5' setback was to allow the garage construction to be completed per the survey foundation certification. She said it met all the criteria and the violation was a result of an error in measurement.

The Board had no questions. Acting-Chair Margeson opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke. Mr. Rheume noted that the Board received a letter in opposition from the direct abutter. Acting-Chair Margeson closed the public hearing.

DECISION OF THE BOARD

[Timestamp 2:45:46] Acting-Chair Margeson said if the Board granted the request, City Staff recommended that the Board acknowledge that the approval would correct the relief granted for the left side yard where it was noted as the right side yard in the previous request. Ms. Harris agreed.

*Mr. Rheume moved to **grant** the equitable waiver, with the following **condition**:*

- 1. This approval will correct the relief granted for the left side yard where it was noted as the right side yard in the December 19, 2023 variance approval.*

Mr. Mannle seconded.

Mr. Rheume said an equitable waiver had two pieces to it: that it was something that existed more than ten years or was the result of a brand new dimensional issue with how the structure was built. He said there was also an abutter who had some concerns, but Mr. Rheume said he did not think they were sufficient reasons for the Board to not grant the waiver. He said one of the concerns was the size of the eave, but per the zoning ordinance, gutters, cornices and eaves no more than 30 inches from a vertical wall are not considered to be part of the setback requirements. He said the particular dimension was a max of about 18 inches, so it fell about 12 inches short of where there would be a concern. He said even though the applicant made the eave somewhat larger than originally indicated, it was still within the allowable amount per the ordinance. Mr. Rheume

reviewed the criteria and said the violation was not noticed or discovered by an owner, former owner, owner's agent or representative, or municipal official until after a structure violation had been completed. He said the error that occurred came down to a few inches but he thought the error was understandable in terms of the construction methodology that had to be used, considering that many of those lots were very narrow. He said it came about from some confusion that wasn't fully understood about where the foundation should have been placed, but it did end up to be slightly off. He said the violation was not an outcome of ignorance of the law or ordinance, or misrepresentation or bad faith on the part of any owner or representative but was instead a good-faith error in measurements or calculations made by an owner, agent or representative. He said it was a case of tight measurements and tolerances, and in the process a slightly misaligned foundation was placed. He said it was not an attempt to create a larger structure or do something nefarious. He said the physical or dimensional violations do not constitute a public or private nuisance nor diminish the values of other properties in the area, nor interfere with the adverse effect of any future uses of any such properties. He said it was a few inches off and although it did put it a little closer to the abutter, it would not make a substantial difference. He said some of the bigger concerns like the drainage were addressed by the nature of the project and not affected. He said due to the degree of past construction or investment made and ignorance of the facts constituting the violation, the correction far outweighed any public benefit to be gained. He said after the foundation was created, the survey was performed and the error was discovered, resulting in a substantial completion of the project, and trying to correct that would not be worth the imposition onto the property owner. He said it met all the criteria. Mr. Mannle concurred and had nothing to add.

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

B. The request of **Paula J. Reed Revocable Trust (Owner)**, for property located at **410 Richards Avenue** whereas an after the fact variance is needed for the construction of a garage which requires the following: 1) Variance from Section 10.521 to permit a 3-foot left yard where 3.5 feet were previously granted. Said property is located on Assessor Map 112 Lot 10 and lies within the General Residence A (GRA) District. (LU-25-11)

DECISION

Because the applicant's previous petition was approved, she withdrew the request and gave a letter of withdrawal to the Board.

IV. ADJOURNMENT

The meeting adjourned at 9:54 p.m.

Submitted,

Joann Breault
BOA Recording Secretary