

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

7:00 P.M.

July 22, 2025

MEMBERS PRESENT: Phyllis Eldridge, Chair; Beth Margeson, Vice Chair; David Rheame; Thomas Rossi; Paul Mannle; Jeffrey Mattson; Thomas Nies

MEMBERS EXCUSED: None.

ALSO PRESENT: Stefanie Casella, Planning Department

Chair Eldridge called the meeting to order at 7:00 p.m.

I. NEW BUSINESS

- A.** The request of **AAM Portsmouth Residences LLC C/O AAM 15 Management LLC (Owner)**, for property located at **184 Madison Street** whereas relief is needed for the addition of 22 parking spaces which requires the following: 1) Variance from Section 10.1113.20 to allow off-street parking to be located between the principal building and the street. Said property is located on Assessor Map 146 Lot 16 and lies within the General Residence C (GRC) District. (LU-25-83)

SPEAKING TO THE PETITION

[Timestamp 5:14] Project engineer Ian Ainslie was present on behalf of the owner Joey Grattan, who was also present. Mr. Ainslie reviewed the petition, noting that the tenants for the three-building apartment complex were having difficulty finding parking. He said they current had 82 spaces and needed the additional 22 spaces. He reviewed the criteria and said the hardship was that there was no other feasible location on the property to put the extra parking spaces.

[Timestamp 10:25] Mr. Rossi said it was unusual for an applicant to be asking for more parking spaces than less. He asked if the spaces if granted would be for the exclusive use of the apartment residents or if there was a plan to lease out the spaces or make the available to the public for a fee in the future. Mr. Ainslie said the use would be solely for the residents and that the new spaces would be tandem ones and would be assigned to the two-bedroom units. Mr. Rheame said the Board received a lot of commentary from the abutters and neighbors. He said the buildings had been around for over 50 years, and he asked what changed to make the parking arrangement no longer adequate. Mr. Ainslie said people's transportation habits had changed and more people had cars. He said the street parking was also more full than it used to be. Mr. Rheame asked if the applicant did

a parking analysis on the current parking and occupancy and what level of detail he conducted to come to his conclusion. Mr. Ainslie said there were 87 parking spaces on the property and that most of the 102 tenants had cars. He said he did not look at Madison Street to see how many spaces were available. Mr. Rheume said the variance request was contrary to what the City was viewing as the future of parking, which would require less parking instead of more parking. He asked what the applicant meant about obstructing the view of the buildings. Mr. Ainslie said the residents were parking in front of the apartment buildings and other buildings and were blocking the views of the buildings. He said the provision of the ordinance wanted to prevent the views of those buildings from being blocked, so he wanted to put those cars in a condensed area that would only block a portion of the buildings. Mr. Rheume said the applicant was creating 11 sets of stacked spots, and he asked if there were 11 two-bedroom units. Mr. Ainslie said there were 36 two-bedroom units but not every two-bedroom unit would utilize the spaces. Mr. Rheume asked how it would be determined who got the stacked spots. The owner Mr. Grattan said he would probably give them to the residents in the front of the building but would utilize the two-bedroom units first if they had two occupants. Mr. Rheume said there were currently three single spots between the buildings, and he asked if the applicant evaluated double stacking those to eliminate one of the upfront parking locations. Mr. Ainslie said they wanted to preserve the greenspace between the buildings. Vice-Chair Margeson said it was hard to see how it would work, given the tandem spaces, because someone would have to pull out so the person in front could pull out, especially if the spaces would be used by two people in two different apartments. Mr. Ainslie said there would be a demand from the two-bedroom unit residents to use all the spaces. Chair Eldridge asked why the applicant preferred to have stacked parking. Mr. Ainslie said they wanted to fit as many cars as possible. He said if there were two people living together, it would be easier to coordinate.

Mr. Nies said the applicant noted that part of their hardship was that there was no other feasible way to get additional spaces. He asked if the applicant considered spaces parallel to the walls of the building or spaces in the back of the building. Mr. Ainslie said those spaces were tight and that the two-way gravel drive had to be preserved as well.

Chair Eldridge opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

No one spoke.

SPEAKING IN OPPOSITION TO THE PETITION [Timestamp 20:21]

Sam Reid of 34 Madison Street said he had driven by the complex at various times of the day and that there had always been multiple parking spaces available on the lot. He said it was hard to imagine that removing some of the little bit of greenspace in the neighborhood would be substantial justice or in the public interest. He said many streets in Portsmouth had traffic on both sides for traffic calming. He said he never had an issue going down Madison Street and being affected by parked cars. He said more impervious surface would also be added to the neighborhood.

Sean Morin of 67 Madison Street said drivers went very fast on Madison Street, but the parked cars tended to slow them down a bit. He said over 20 spots were empty at the complex during the day and night. He said the applicant might want more parking spaces so that they could charge more rent. He asked why the applicant could not allow compact parking on their lot.

Lee Frank of 169 Madison Street said he had lived there for 18 years and that there was almost always parking available in their lot. He said there was a future City project to install recessed curbs in front of the complex for parking and landscaping. He said the proposal was not in the public's interest. He said he noticed a lot cars with license plates from other states parked in the lot. He said installing a parking lot in front of the building would not help aesthetics and would not increase surrounding property values and thought it was an attempt to justify higher rents.

Rick Condon of 141 Madison Street said he generated a picture of what the parking would look like. He said he had lived there for 29 years and that the only times there were on-street parking issues were during the Christmas parade and the Fourth of July. He said the addition of 22 spaces would create an appearance of a big box store and eliminate greenspace. He said his property values were already diminished by the apartment complex. He also noted that the proposal did not address security or lighting issues and that the current LED lighting had been opposed by the neighbors.

Jay Rouleau of 159 Madison Street said he thought it was a revenue circumstance instead of an undue hardship. He said the owner would charge more rent because of those extra parking spaces. He said he would not like to see more impervious surface.

SPEAKING TO, FOR, OR AGAINST THE PETITION

The property manager Joey Grattan said the proposal was to give additional parking spaces to the tenants and that he did not charge for parking and had no intention to. He noted the buildings had undergone renovations for the past three years, so they had not been filled with tenants during that time but would be soon. He said they had 108 bedrooms, so the parking could overflow quite a bit on the street. He said they had no plans to add more lighting and that they had lowered and dimmed the existing lighting. He said some residents did not change their license plates right away. He said they would have one parking space per tenant if the variance was granted. He said the greenspace was for the tenants. He said the proposed parking would be a better alternative than on-street parking.

Mr. Ainslie said the apartment complex did not have a commercial look and that the parking was not commercial in nature.

Rick Condon said several two-bedroom apartments had younger people now who moved in with significant others, so there were often four people in an apartment instead of two.

Mr. Ainslie said if there were four people in a unit, that would add to the parking problem. No one else spoke, and Chair Eldridge closed the public hearing.

DECISION OF THE BOARD

[Timestamp 40:35] Vice-Chair Margeson said the application failed on almost every criterion. Mr. Mattson said he did not think a traffic study would be necessary because there were more tenants than parking spots. He said it was a reasonable request. He said rents were becoming more expensive and people doubled up, so there would be more parking spaces needed. He said the tandem parking would not be ideal, but if he were a tenant he would rather have some parking than no parking. He said neighbors typically loved to have more street parking.

*Vice-Chair Margeson moved to **deny** the variance for the application. She said it failed Sections 10.233.21 and .22 of the ordinance because it would be contrary to the public interest and would not observe the spirit of the ordinance. Mr. Rheume seconded the motion.*

Vice-Chair Margeson said it was important to look at the provisions of the zoning ordinance at play, which had a phrase in Section 10.1113.20 that stated “the location of parking facilities on a lot requiring off-street parking spaces shall not be located in any required front yard or between a principal building and a street, including on a corner lot.” She said the applicant’s property was on a corner lot and the proposed parking was between the principal building and the street, which was contrary to what the zoning ordinance was trying to prevent. She said the exceptions were for a single-family dwelling including the combination of a single-family dwelling with an ADU, or a two-family dwelling, so it was applicable specifically to the applicant’s type of building. She said the parking on the lot was very visible as someone approached the complex from Madison Street, and the request for additional parking would make it even more visible. She said it would have the appearance of a parking lot with three apartment buildings on it. She said it failed on those two criteria because it was exactly in violation of the zoning ordinance. She said it did have the potential to alter the essential character of the neighborhood, noting that the rest of the neighborhood was single-family dwellings right up to the road and that a lot of the homes did not have garages.

Mr. Rheume concurred. He said his biggest concern was that the application failed on the hardship criteria, but he said it came down to the provision that there are general public purposes that the zoning ordinance is trying to achieve that do outweigh what the applicant’s proposal was for the variance. He said the lot was over 50 years old and the applicant said there were more cars, but Mr. Rheume said the zoning ordinance was really designed around the idea that the City wants, and are expecting as time goes forward, to need fewer autos, not more. He said he thought the applicant was trying to pre-solve a problem that the City was trying to move away from entirely. He said the neighborhood had lots of grocery stores, restaurants, and other attractions within easy walking distance of the complex, and that sort of availability should be encouraging fewer cars on the property. He said if Madison Street had difficult parking, that might have weighed in the applicant’s favor. He said the double stacking was the other flaw and that he did not see it as a great solution to the applicant’s problem. He said it would not be enforced and other people could park in any of the spots but more of the residents would not be able to take advantage of the stacked spots. He said there were opportunities in the middle of the properties to offer stacked parking. He said he might have more empathy for adding a few spots along the edge of the greenspace. He said he did not

think the double stacking was workable and that there was a real problem to solve. He said the applicant did not promote bicycle or moped parking or other forms of conveyance that people used to get around, especially so close to downtown and the West End.

Mr. Rossi said he would support the motion but said several red herrings came up in the discussion of the motion. He said it was not within the Board's jurisdiction to dictate whether people should own or not own autos, and it was also not a good rationale for denying the variance. He said several of the neighboring residents said they thought the applicant's motivation was to enhance the rent, but Mr. Rossi said that was a legitimate purpose for a landowner to improve the value of their property to enjoy a higher revenue from it and was not a reason for the Board to be opposed. He said he agreed that the application failed at least on the hardship criteria, however.

Vice-Chair Margeson asked Mr. Rheume if he also felt that the application failed on the spirit and intent of the ordinance. Mr. Rheume agreed.

*The motion **passed** by a vote of 6-1, with Mr. Mattson opposed.*

- B.** The request of **Shannon M & Stephen E Parsons (Owners)**, for property located at **160 Essex Avenue** whereas relief is needed to demolish the existing garage and construct a new 2 bay, 2 story garage which requires the following: 1) Variance from Section 10.521 to a) allow a 7 foot right side yard where 10 feet are required, b) allow a 17 foot front yard where 30 feet are required, and c) allow a 28.5% building coverage where 20% is maximum allowed; and 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 233 Lot 63 and lies within the Single Residence B (SRB) District. (LU-25-92)

SPEAKING TO THE PETITION

[Timestamp 53:45] The owner/applicant Stephen Parsons was present. He said he and his wife wanted an addition to make the house more family-friendly and handicap accessible for two aging parents to live in. He said the garage would have living space above. He reviewed the criteria.

[Timestamp 59:20] Mr. Rossi asked why the decision was to build a new garage and addition where the current garage was instead of on the other side of the house where it would not be that closer to the neighbor. Mr. Parsons said there was a sewer easement on his neighbor's property and that he did not have enough space to put anything of size on that side. He said there was also a substantial hill on the left side of the house. Mr. Rheume asked if there was access between the kitchen and the breezeway on the upper floor. Mr. Parsons said there was no wall between the kitchen and the breezeway and that it would be just be open space. Mr. Rheume asked where the stairway on the lower levels would go. Mr. Parsons explained that it had been difficult to draw the three levels but it was basically two staggered levels, like a split entry. Mr. Rheume asked what the purpose of the bathroom behind the garage was that did not seem to be connected to the living spaces. Mr. Parsons

said it was just an additional bathroom. Mr. Rheume said that, from a handicap standpoint, the three levels would go against making the house handicap accessible. Mr. Parsons said there would be a wheelchair lift from the mudroom to the main level of the house, which would result in no handicap access to the area above the garage. Mr. Rheume said the exterior patio with concrete pavers and a roof over it contributed to the overall coverage and asked what the reason was. Mr. Parsons said it was very bright in that area during the summer and he thought it would be easier to have a permanent roof instead of the current awning.

Mr. Nies asked what other options Mr. Parsons considered. Mr. Parsons said he thought about building a second story on the structure but it was 2x4 construction that would be difficult to modernize. Mr. Nies said if the building coverage increased by a certain amount, then the open area should increase by something close to the same. He said the building coverage was going up roughly 15 percent and the open area coverage was only going down by about 11 percent, so it was like the building coverage was going up but the applicant was gaining more area. He asked why those two numbers did not line up more closely. Ms. Casella said the proposed garage was already covered by driveway, so the direct correlation was not seen. Mr. Parsons said a lot of the new structure would be placed on what was already asphalt. Vice-Chair Margeson verified that the building coverage was just the ground floor of the building and did not include the other floors.

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

[Timestamp 1:08:35] Mr. Rossi said the building coverage was a big increase over the current situation but that it was not unusual for the Board to have variances in that range of building coverage for a lot. He said it was a big change relative to the sorts of things the Board approved but was not out of the realm of reasonableness. Chair Eldridge said it would not crowd the lot at all and the benefit from it would outweigh whatever increased coverage there was. It was further discussed.

*Mr. Mattson moved to **grant** the variances for the application as presented, seconded by Mr. Nies.*

Mr. Mattson said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said the proposed use would not conflict with the purposes of the ordinance because it would still be a single-family home with an improved garage with an addition above. He said it would not alter the essential character of the neighborhood because several other parcels had garages and similar setbacks. He said substantial justice would be done because the benefit to the applicant would not be outweighed by any harm to the general public. He said granting the variances would not diminish the values of surrounding properties because the home would just be continued with a new addition that would improve the value of the applicant's property, and there was no reason to think that it would diminish the values of surrounding

properties. He said literal enforcement of the ordinance would result in unnecessary hardship, noting that the driving factor was the special conditions of the property. He said it was undersized and smaller than the 15,000 square feet required for that zone, so smaller changes resulted in a bigger jump in building coverage. He said the home was located where it was on the property, so any addition in line with the home would require a variance. He said the side yards had minimal relief requested that would not hinder the light, air, and privacy of the neighboring properties. He said the proposed use was a reasonable one because the home would still be a single-family home with a garage. Mr. Nies concurred. He said it looked like a large addition but it would be consistent with other homes in the area, so it would not affect the essential characteristics of the neighborhood. He said the construction of the existing house in addition to its location limited the ability to make changes at a reasonable cost, like trying to add a second story because the construction would be extremely difficult. He said that was an additional special condition of the existing property that helped justify the hardship that exists and justifies the change and variances requested.

Mr. Rheame said he would support the motion. He said the house was close to the property line and would have a substantial addition, but the windows on that side of the property would be minimal and would not be occupied much. He said the neighborhood had several different property widths, so there was not much room for the applicant's house. He said the total square footage could be scaled back by 8-12 percent but that it was not beyond the realm of what the Board had approved in the past. Vice-Chair Margeson said she would not support the motion because she thought further encroachment on the right yard setback would be too much. She said the light and air situation on the right yard was significant, and the scale of the addition would dwarf the small house next to it. She said the increase in building coverage would be a significant increase in building coverage. She said everything would be on the right side of the lot.

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

- C. The request of **One Twenty Four Group Inc (Owner)**, for property located at **124 Heritage Avenue** whereas relief is needed to establish a batting instruction facility greater than 2,000 s.f. of GFA which requires the following: 1) **Special Exception** from Use # 4.42 to allow a health club, yoga studio, martial arts school, or similar use with more than 2,000 s.f. of GFA. Said property is located on Assessor Map 284 Lot 8 and lies within the Industrial (I) District. (LU-25-85)

SPEAKING TO THE PETITION

[Timestamp 1:17:47] Co-owner Ira Lear was present and said they wanted to lease Unit #7 and needed a special exemption to permit a recreational use. He said the proposed use was for a basement/softball swing lab simulator facility dedicated to private instruction by appointment only. He said there would be two employees, a manager, and a certified baseball hitting instructor, and the hours would be Monday through Friday from 3 to 10 pm and Saturday from 9 am to 3 pm. He reviewed the criteria and said they would be met.

[Timestamp 1:22:00] Mr. Rheume asked where Unit 7 was within the building. Mr. Lear said it was in the corner of the ell. Mr. Rheume noted that the photo showed the back side of the unit having truck access, and he asked if that door would be the primary access. Mr. Lear said the front entrance would be the primary entrance. Mr. Rheume said the parking needs asked for would be met more in the front of the building. Mr. Lear said there was access in the rear and if parking became an issue, the rear parking could be used for the staff.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

David Choate said he had a commercial real estate firm at 500 Market Street and that there had been several recreational uses that were approved by the Board in the past, like the Salt Pump Climbing Gym and a few others. He said the batting facility would not be heard from the abutting units and the use would have a minimal intensity. He said the noted 180 parking spaces were based on the site plan but the parking lot was currently being restriped, so there would be more parking spaces.

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

DECISION OF THE BOARD [Timestamp 1:26:53]

*Mr. Rossi moved to **grant** the special exception for the application as presented and advertised, seconded by Mr. Rheume.*

Mr. Rossi said the use was permitted in the ordinance by special exception. He said granting the special exception would pose no hazard to the public or adjacent properties on account of potential fire, explosion or release of toxic materials. He said the nature of the simulation experience did not include any of those hazards. He said there would be no detriment of property values in the vicinity because the proposed use was consistent with other uses within the building and would be consistent with the essential characteristics of the uses in the building itself. He said because of the nature of the business and the relatively low flow of customers on an hourly basis, he said there would be no creation of a traffic or safety hazard that he could envision with regard to the operations. He said there would be no excessive demand on municipal services because it would not require any excessive use of water, sewage, or police and fire protection. He said there would be no significant increase in stormwater runoff onto adjacent properties because there would be no changes to the external structure of the building and parking area.

Mr. Rheume concurred. He noted that the application addressed the noise impact and that the Board's criteria included any noise and its impact on surrounding properties that would diminish surrounding property values. He said the applicant demonstrated that their facility would not have a negative noise impact that would diminish surrounding property values.

*The motion **passed** unanimously, 7-0.*

- D.** The request of **Stephen W Sanger Rev Trust (Owner)**, for property located at **52 Mendum Avenue** whereas relief is needed to construct an 11.25 s.f. addition to the left side of the structure which requires the following: 1) Variance from Section 10.521 to a) allow a 3-foot left side yard where 10 feet are required, b) allow 35% building coverage where 25% is maximum allowed; and 2) Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on assessor Map 149 Lot 58 and lies within the General Residence A (GRA) District. (LU-25-95)

SPEAKING TO THE PETITION

[Timestamp 1:30:40] The applicant Stephen Sanger was present and said he wanted to establish single-floor living for aging in place for his wife and himself. He said there was enough room to put a stackable washer and dryer in the kitchen via a small side extension. He said the back of the house would look the same and that the neighbors were fine with the extension. He reviewed the criteria.

[Timestamp 1:35:24] Mr. Rheume said the structure was going from 34.6 to 34.9 percent building coverage, rounding up to 35 percent. He said on the Staff Memo it was listed as existing 35 and proposed 35. He asked Ms. Casella if there was any discussion among the Planning staff that it should not be considered to need a variance if it was within the allowed areas. Ms. Casella said the Planning staff did discuss it but the applicant was changing the structure. Mr. Nies said in 2011, the Board granted a variance to allow building coverage of 30 percent when a deck was added, and that somehow since then, the building coverage increased by five percent. He asked if there was a change to the dimensions of the lot by a survey. Mr. Sanger said nothing was done to the building except that the shed was added 20-25 years ago. Mr. Nies asked Mr. Sanger if he considered putting the laundry area in the back of the home. Mr. Sanger said he could not do so.

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 [Timestamp 1:38:05]

*Mr. Nies moved to **grant** the variances for the application 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 affect the health, safety, or welfare of the neighborhood, would not have any effect on light and air, and would not alter the essential characteristics of the neighborhood. He said it would be consistent with the spirit of the ordinance because the home would remain a single-family home. He said granting the variances would do substantial justice because he could not see any benefit to the public by denying the variance that would outweigh the harm to the applicant. He said the ability to

age in place was important to the community and that granting the variances would allow that. He said no evidence was presented that granting the variances would diminish the values of surrounding properties. He said literal enforcement of the ordinance would result in unnecessary hardship. He said there were several special conditions of the property, including that the house extended nearly the entire width of the property and that the lot was already nonconforming. He said it was smaller than normal but the setbacks were not really being met. He said the lot coverage would be substantial but it was a tiny increase from the existing lot coverage. Based on those special conditions, he said there was no fair and substantial relationship between the purposes of the ordinance and their specific application to the property. Mr. Mannle concurred.

*The motion **passed** unanimously, 7-0.*

- E. The request of **Ampet Inc (Owner)**, for property located at **921 Islington Street** whereas relief is needed for the demolition of the existing structure and the construction of a new building to be used for a restaurant which requires the following: 1) Variance from Section 10.575 to allow a dumpster to be located within 20 feet of a Residential or Mixed Residential zoned lot or within 10 feet of any lot line; and 2) Variance from Section 10.1113.20 to allow off-street parking to be located between the principal building and the street. Said property is located on Assessor Map 172 Lot 10 and lies within the Character District 4-W (CD4-W). (LU-25-96)

SPEAKING TO THE PETITION

[Timestamp 1:41:00] Project engineer John Chagnon was present on behalf of the applicant, with Meghan Boland of Chinburg Builders, the restaurant operator Brandon Vesey, and the project architect Evan Mullen. Mr. Chagnon said the footprint would remain the same but there might be a slight addition in the site review process to house auxiliary equipment. He said the prior gas station use was discontinued and the restaurant would complement the pedestrian-friendly environment. He said the curb cut would be significantly reduced in size and the secondary access would be a safe location along the east of the property. He said there would be sufficient parking to accommodate the expanded number of patrons and staff. He reviewed the criteria.

[Timestamp 1:49:10] Mr. Mannle asked if the statement “whereas relief is needed for the demolition of the existing structure and the construction of a new building to be used as a restaurant to require the following...” was true or false. Mr. Chagnon said it was not true because it was the reuse of the existing structure and that only portions of the structure would be demolished, like the interior walls. Mr. Mannle said if the structure were demolished, there would be no hardship for parking. Ms. Casella said the description was a Staff error. Mr. Rheume said he shared Mr. Mannle’s concern. He asked Ms. Casella why the existing parking was noted as not applicable. Ms. Casella said it was because the property had been vacant for so long and not used. Mr. Rheume asked Mr. Chagnon if he knew what the prior use for parking was, and if any of it was in front of the structure. Mr. Chagnon showed a photo that showed a parked vehicle in front of the door and a vehicle parked along the street. He said neither of those cars were at the pumps. He said he drove by the site several times and did not think the prior gas station did anything else but dispense gas. Mr.

Rheaume referred to the error about the demolition and rebuild and asked what the motivation would be for the applicant to reuse the structure instead of starting over from scratch. Mr. Chagnon said the reuse of the gas station vernacular was essential to the proposed restaurant, like a few overhead garage doors that would open to let light and air in. Mr. Mullen said keeping the building intact had something to do with economics and budget for the project. He said the motives shifted from capturing the history and character of the building and trying to preserve elements of it and that the proposed design aimed to restore some of those characteristics. Mr. Rheaume said the variance plan showed where the dumpster was but he said the neighboring property to the left owned the strip of land behind the applicant's property and looked like they had three dumpsters on the property line. Mr. Chagnon said the dumpster to the left was mis-labeled and was actually a shed, and the other dumpsters tended to come and go. He said there were two dumpsters at the time of the survey. It was further discussed. Vice-Chair Margeson said the Staff Report indicated that the dumpster was within five feet of a mixed residential zone, and she asked if it was the property in the back. Mr. Chagnon said the property in the back was also zoned CD4, so it was mixed use. Vice-Chair Margeson said there was the SRB zone across the street that was more than five feet away. Chair Eldridge said the rule was 10 feet within any lot line. Mr. Chagnon said the five feet allowed them to have the dumpster and they were pushing it closer to the property line so that the view of the restaurant would be kept. He said there were also plans to put a mural on the side wall. Vice-Chair Margeson said she toured the site and the dumpsters in the back looked like construction ones. Mr. Chagnon said at the time of the survey there were two smaller dumpsters.

Mr. Nies asked Ms. Casella if there was a problem taking an action that was not as advertised by a Legal Notice. Ms. Casella said it was less impactful because there it was not a demolition, and she recommended a condition that the Board recognize that as an error in the noticing and that the structure would not be demolished. Mr. Nies said he struggled with the argument that it was less impactful because if the building were demolished, it was possible that the applicant could rebuild and would not need the variance. Vice-Chair Margeson said the presenting of the variance application made it clear that it was not a demolition. She said she agreed with Ms. Casella, and it was further discussed.

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 [Timestamp 2:01:20]

*Mr. Rossi moved to **grant** the variances for the application with the following **condition**:*

- 1. The current structure shall not be completely demolished and the exterior walls will remain at the minimum as to the definition of not being fully demolished.*

Vice-Chair Margeson seconded.

Mr. Rossi said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said it was a commercial facility being repurposed in a positive way, and nothing within the proposed use would in any way be contrary to the types of uses found in the area. He said the specific variance with regard to the placement of the dumpster would not alter the character of the area because it would be in the back and would border up against a large parking area. He said granting the parking variance for parking between the existing structure and Islington Street would not change the character of the area because it was the current status of the business that had been operating there. He said it was even noted in the photos that there were cars parking between the building and the street on the left-hand side of the lot. He said there were frequently cars that were awaiting or had completed repairs that were parked in that area. He said granting the variances would do substantial justice because there would be no loss to the public by the variances being approved, and therefore any loss to the applicant would not be justified and would represent a lack of justice. He said the values of surrounding properties would not be diminished, noting that the Ambit gas station was never the crown jewel of Islington Street and the West End, and the use and rehab of the building to make a commercial appealing enterprise would be an improvement to the area rather than a detriment to the property values of the surrounding properties. He said literal enforcement of the ordinance would result in unnecessary hardship, noting that the special condition of the property was the existing historic structure that the property owner wanted to preserve, which created a need for a variance in the parking accommodations to be placed between the building and the street. He said that, due to the location of that and the lot's size and shape, there was no reasonable alternative to accommodate parking for the restaurant, and as small as the restaurant would be, it would still need parking. Regarding the placement of the dumpster, the flow of traffic and the use of parking, he said there really was no other logical place to put the dumpster and it would not be in an area where it would be expected to cause any problems for the property just over the property line.

[Timestamp 2:04:59] Mr. Mattson said City Staff recommended another **condition** that the location and orientation of the dumpster may change as a result of site review but that it could not be located closer to the lot than what was presented. It was further discussed and decided that it would be added to the motion.

Vice-Chair Margeson said that, with respect to the dumpster variance, it was very de minimis. She said the lot line in the back was open air and there was no structure there at this point. In terms of the parking in front of the principal structure and the street, she said there was a problem for an apartment building in one of the Board's earlier applications, but in this application it was much less problematic because there was existing parking prior to the reuse of the property. She said the small parcel of CD4-W across the street also had parking in front of the structure. She said they were commercial structures and not in a residential area. She said she did not find that there was any problem with the spirit and intent of the ordinance. She said due to the odd shape of the lot, trying to get the parking in back of it, even if the structure was demolished or moved up, would be very difficult.

Mr. Rheaume said the Board had discussed whether they wanted to recognize that the advertisement for the application did speak to demolition of the existing structure and was admitted as an error by Staff. He said he thought the motion meant that the applicant was required to keep the four walls but it did not mention that the advertising error. Chair Eldridge asked Mr. Rossi if would accept the condition of the Board recognizing that the advertisement mis-stated that there was to be a demolition of the existing structure, which was not the applicant's intent. Mr. Rossi agreed, as did Vice-Chair Margeson. Mr. Rheaume noted that the Board allowed similar relief for the reuse of the Getty station farther up Islington Street and that there was parking there between the building and one of the streets on a corner that was allowed by the Board.

The **amended** motion was:

*Mr. Rossi moved to **grant** the variances for the application with the following **conditions**:*

- 1. The Board recognizes that the advertisement misstated that there was to be a demolition of the existing structure, which was not the applicant's intent. The current structure will not be completely demolished and the exterior walls will remain at the minimum as a definition of not being fully demolished.*
- 2. The location and orientation of the dumpster may change as a result of site review but shall not be located closer to the lot than what was presented.*

*Vice-Chair Margeson seconded. The motion **passed** by a vote of 6-1, with Mr. Nies opposed.*

II. ADJOURNMENT

The meeting adjourned at 9:10 pm.

Submitted,

Joann Breault
BOA Meeting Minutes Taker