

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

**7:00 P.M.**

**August 19, 2025**

**MEMBERS PRESENT:** Beth Margeson, Vice Chair; Members David Rheaume, Thomas Rossi, Paul Mannle, Jeffrey Mattson, and Thomas Nies

**MEMBERS EXCUSED:** Phyllis Eldridge, Chair

**ALSO PRESENT:** Stefanie Casella, Planning Department

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Vice-Chair Margeson was Acting Chair for the evening.

**I. APPROVAL OF MINUTES**

**A. Approval of the July 15, 2025 meeting minutes.**

*Mr. Rossi moved to **approve** the minutes as amended, seconded by Mr. Nies.*

Mr. Nies requested the following changes. On page 9, regarding the sentence ‘He said the argument could be made that there were not as many activities taking place on the property’, Mr. Nies asked that the word ‘currently’ be added so that the sentence now reads: ‘He said the argument could be made that there were not as many activities currently taking place on the property’.

On page 9, the vote for Petition C, 636 Lincoln Ave, Request to Withdraw, was changed from 7-0 unanimous to 6-0 unanimous, with Mr. Nies recused. The motion now reads: *Mr. Mannle moved to grant the request to withdraw the petition, seconded by Mr. Rheaume. The motion passed unanimously, 6-0, with Mr. Nies recused.*

On page 11, in the last line of the Timestamp 2:37:42 paragraph, the word ‘did’ was added to the sentence so that it now reads as follows: Mr. Nies said he would support the motion primarily because of the setback issue but did not think a hardship had been demonstrated.

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

**B. Approval of the July 22, 2025 meeting minutes.**

*Mr. Mattson moved to **approve** the minutes as presented, seconded by Mr. Nies. The motion **passed** unanimously, 6-0.*

## II. OLD BUSINESS

### A. 92 Brewster Street – Rehearing Request (LU-25-117)

Mr. Rheume recused himself from the petition. Mr. Rossi said he did not find that there was a substantive error made by the Board and that it largely seemed to be disagreement with the Board's viewpoint, which was not an error, so he was not in favor of a rehearing.

### DECISION OF THE BOARD [Timestamp 10:54]

*Mr. Rossi moved to **deny** the Request for Rehearing, seconded by Mr. Mattson.*

Mr. Rossi said the petition was based on a disagreement with the Board's reasoning and conclusion and did not point out any substantive errors. He said on that basis it did not qualify for a rehearing. Mr. Mattson concurred and said it was more of a matter of different points of view than erring. Mr. Nies said one of the expressions of public interest is the zoning ordinance and that the building itself complies with all elements of the zoning ordinance. He said the applicant has a right to have an ADU if the measurements of the building all fit within the zoning ordinance. He said there was a concern about the setback being measured inappropriately and that it should be measured from the right of way. He said that was not what the ordinance calls for.

*The motion to deny the Request for Rehearing **passed** unanimously, 5-0.*

Mr. Rheume resumed his voting seat.

- B.** The request of **Greengard Center for Autism (Owner)**, for property located at **89 Brewery Lane** whereas relief is needed for a change of use from an assisted living home with 5 residents to an assisted living center with 6 residents which requires the following:
- 1) Variance from Section 10.440, Use #2.11 for an assisted living center where it is not permitted. Said property is located on Assessor Map 146 Lot 26 and lies within the Character District 4-L2 (CD4-L2). (LU-25-77)

## SPEAKING TO THE PETITION

[Timestamp 13:18] Attorney Tim Phoenix was present on behalf of the Greengard Center, along with the Greengard Center Board Chair Dr. Barbara Frankel, Executive Director Tanya Newkirk, and Jane Bannister, the parent of the autistic person who would live in the sixth unit. Attorney Phoenix said the project was approved in 2015 and 2018 for an assisted living home permitted by special exception and that it was now an assisted living center with a proposed sixth resident, which was not permitting by zoning. He said nothing would physically change on the interior or exterior

and that the living area for the proposed sixth resident would be the former caretaker's apartment. He said the center was located in an eclectic area of businesses and residential homes and that the Greengard Center also owned most of the street. He said there was a pending action to grant the City an easement to travel over that portion of the street that was presently used by the public, and he noted that the City attorney had a draft of the easement and that City Staff proposed approval of the variance contingent on the finalization of the easement. He reviewed the criteria in detail.

[Timestamp 24:30] Mr. Rheaume said the client's property was like a buffer between the CD4-L2 and CD4-W zones, and he asked if there was anything else about the property that would reassure the Board that the buffering would really take place. Attorney Phoenix said there had not been any issues between the neighbors and the existing five residents and that the overall intensity would be less than when the property was approved for special exception. Dr. Frankel said her son also had autism and lived in one of the apartments. She noted that the center opened to two residents in June 2021 during Covid. Mr. Rheaume asked if the applicant would agree to a stipulation that there be no more than six residents, and Attorney Phoenix agreed. Acting Chair Margeson noted that the assisted living center was defined as six or more residents but there was no upper cap and the variance ran with the land. She said it was possible that the structure could be taken down and replaced by something else. Jane Bannister of Kensington said her son Peter had been part of the Center since 2016 and that the opportunity for him to live in an environment that valued his strengths and challenges was unmatched by anything else she had looked into in NH and other states. She said the level of comfort that her family had in the Greengard Center was immeasurable.

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** [Timestamp 30:18]

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

- 1) The easement and right of way shall be finalized as a condition of approval.*

*Mr. Mattson seconded the motion.*

Mr. Rossi reviewed the criteria and said it was about taking an existing use in the building, with no changes to the interior or exterior, and a minimal expansion. He said it was an expansion to six residents and did not actually open the gateway to an infinite expansion into an assisted living center. He said it specifically indicated a center with six residents, which he was fine with and felt that there was no need for a further stipulation. He said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said there was no public interest to be served by denying the expansion of the use. He said substantial justice would be done

because there would be no loss to the public by having an additional resident in the center. He said most of the discussion in the applicant's presentation was how the facility is run, which was really outside the Board's jurisdiction, and the only thing that concerned the Board was the use of the property, which was a minor change from the current use. He said granting the variance would not diminish the values of surrounding properties because the applicant's property was already in use in this manner and there was no conceivable way that it would diminish the values of surrounding properties by continuing the use and expanding it from five to six residents. He said there was no fair and substantial relationship between the general public purposes of the ordinance and its specific application, noting that in this instance, it was not the purpose of the ordinance to create difficulties in providing care for individuals who need this type of care in this type of facility, so there would be no conflict with the public purpose of the ordinance. Mr. Mattson concurred and said the ordinance needed to have a cutoff at some point, but the actual change from five to six residents without any physical external changes to the structure really was a minimal change, even though the category changed from assisted living. He agreed the added stipulation of increasing numbers was not necessary because the applicant would have to come back before the Board again. Mr. Rossi restated the stipulations as indicated on page 32 of the packet, which were incorporated into the motion's stipulations. Mr. Rheume said there was no stipulation regarding the maximum number of residents being capped at six, and he feared that the assisted living center had a broad interpretation and that the variance if granted would run with the land. He said he was not comfortable approving the petition without a stipulation of the Center having a maximum of six members. It was further discussed, and Mr. Mattson added the stipulation that the residents would be capped at six residents.

The **amended** motion was:

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

- 1) There shall be no more than six residents at the Center, and*
- 2) The site plan approval shall include provision of an easement or right of way to the City for a portion of the road and/or future sidewalk on the parcel to connect to the public portion of Albany Street that shall be reviewed by the Planning and Legal Departments and approved by the City Council as a condition of this approval.*

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

### **III. NEW BUSINESS**

- A.** The request of **Timothy John Berky JR (Owner)**, for property located at **121 Eastwood Drive** whereas relief is needed to construct an accessory storage shed in the rear of the property which requires the following: 1) Variance from Section 10.573.20 to allow a 5 foot rear yard where 21 feet are required. Said property is located on Assessor Map 288 Lot 3-17 and lies within the Single Residence B (SRB) District. (LU-25-97)

**SPEAKING TO THE PETITION**

[Timestamp 39:06] The owner Timothy Berky was present. He said the neighborhood had 21 residential lots and the road and infrastructure were privately owned. He said the spatial constraints did not align with the City's requirements and that he wanted to build an accessory storage shed with a second-story gym. He said the lot was small compared to most of the other lots and was landlocked between two abutting properties, which also had sheds, and that those properties would not be affected. He reviewed the criteria and said they would be met.

[Timestamp 46:08] Mr. Rheaume said there seemed to be quite a bit of topography on the property, with the land sloping down and a lot of ledge. He asked what aspects of the topography drove the location for the shed and for pushing it closer to the back property line. Mr. Berky said if he pushed the shed closer, it would require blasting or a significant concrete wall to match the existing ledge. Mr. Rossi asked why a 21-ft shed was needed. Mr. Berky said the first floor would be for storage and the second floor would be a gym. He said he needed to stay in good physical shape for his job. He submitted a letter of support to the Board.

Acting Chair Margeson opened the public hearing.

**SPEAKING IN FAVOR OF THE PETITION**

No one spoke.

**SPEAKING IN OPPOSITION TO THE PETITION**

Lisa Arvidson of 131 Eastwood Dr and her husband Dwight were present. Ms. Arvidson said they were against the petition because the applicant had been building his garage for the past five years, which had removed a lot of sunshine and privacy for their backyard. She said the proposed 21-ft story structure would take away any remaining sunlight they had in their yard. She said the ongoing construction was stressful, lowered their property value, and made their yard less enjoyable. Mr. Arvidson said the structure's pad would be four feet above grade, making the actual height 25 feet. He said the neighbors had sheds but they were smaller, and he said there was no hardship.

Pierre Brazeau of 111 Eastwood Dr said he did not see the need for a two-story shed with a gym. He said the windows would look into his living room and other rooms and the elevation would overlook his backyard. He said it would impact their privacy and property's value.

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

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

**DISCUSSION OF THE BOARD**

[Timestamp 54:20] Mr. Mattson said he questioned the hardship for a need of a two-floor structure, but the variance request was not for the structure. He said the structure seemed like it would be high, but it was due to the ridge. He said he was not sure if there was a hardship, however. He said the lot was unusual because it was oddly shaped and had the 111 Eastwood Dr property surrounding it from the back side, but a one-story shed would still need a variance and he thought it would be constructed well. Mr. Rossi said the 21-ft height was relevant because the ordinance dictates the required distance from the property line. Ms. Casella said if a shed was over a certain height, it had to be farther from the lot line. Mr. Rossi said the topography was relevant due to the shed's proposed height and its elevated position on the land, so he would not be in favor of granting the variance. Mr. Rheume said the application met the side yard setback of ten feet, so the abutting property to the right was okay but the back property line was the problem. He said a smaller shed could be placed in that location and thought the second story was a concern for the back abutter.

#### **DECISION OF THE BOARD** [Timestamp 59:48]

*Mr. Rossi moved to **deny** the variance for the petition as presented and advertised, seconded by Mr. Rheume.*

Mr. Rossi said the petition needed only one criterion to fail, and in this case it was the hardship. He said there was a relationship between the purpose of the ordinance and the unsuitability of the shed's height, which drove the need for as much relief as requested to the back lot line. He said the ordinance was trying to preserve light and air for the neighboring properties, and the proposed shed's second story pushed it outside of what the ordinance was trying to achieve by keeping open space where needed. He said the petition was particularly exacerbated by the property's special condition because the proposed location was elevated in topography, which made the second floor more egregious than it otherwise would be in terms of blocking light and air. Mr. Rheume agreed that the petition failed on the hardship criteria, noting that a two-story shed was an unusual request and that a second-story gym was usually seen in the primary structure. He said the other sheds in the neighborhood were smaller and only one story. He said the applicant could have a 120-sf one-story shed and have no restrictions with regard to the setbacks.

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

- B.** The request of **Paul and Karolina Roggenbuck (Owners)**, for property located at **2 Sylvester Street** whereas relief is needed to construct a detached garage with accessory dwelling unit which requires the following: 1) Variance from Section 10.1114.31 to allow a second driveway where only one is permitted. Said property is located on Assessor Map 232 Lot 35 and lies within the Single Residence B (SRB) District. (LU-25-105)

[Timestamp 1:03:47] The Board discussed whether Fisher v Dover applied and decided that it did not apply because the proposed project was a significant change from the previous one.

#### **SPEAKING TO THE PETITION**

[Timestamp 1:06:44] Owners Karolina and Paul Roggenbuck were present. Ms. Karolina said they wanted to build a second driveway to serve a detached ADU on their property. She said the proposed ADU would be within all the size parameters of the ordinance, and they only needed a variance for the additional driveway. She reviewed the criteria in detail.

The Board had no questions. 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** [Timestamp 1:15:38]

*Mr. Rossi moved to **grant** the variance for the petition as presented and advertised, seconded by Mr. Rheume.*

Mr. Rossi said the ADU was allowed by right and was also allowed to be in its particular location, so it required no variances. He said it was an interesting case for the Board because as more ADUs were being permitted, the Board had to consider how people would get to and from them. He said in this case, a second driveway to access the ADU was logical. He said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said the Board should be promoting the use of ADUs. He said substantial justice would be done because there would be no loss to the general public by allowing the driveway. He said the values of surrounding properties would not be diminished because many of the surrounding properties already had second driveways and that it would not be out of character for the neighborhood. He said the grass permeable pavers were a great idea and that the overall effect between using those pavers and narrowing the existing driveway would decrease the impermeable surface and could be a benefit to the surrounding properties as well. He said literal enforcement of the ordinance would result in unnecessary hardship, noting that the special condition of the property that distinguished it from others was that it had an ADU by right, which was the condition that drove the need for the variance to make reasonable use of that ADU.

Mr. Rheume concurred. He said what was different about the property was that it is an unusually long piece of property and that the ordinance was trying to spread driveways out and to reduce backing in and out as well as the number of entry points onto a street. He noted that the abutting property was about the same length as the applicant's and that they had two driveways, which indicated that there was a hardship and that the extra driveway would not look out of place. He said the applicant was allowed to put a garage as long as the ADU did not exceed a certain size, and he was making it a more amenable living situation. He said it was reasonable and a special condition of the property. Mr. Nies noted that the Board received a letter from a resident who opposed the requested variance and that many of the neighbors opposed the attached ADU, but he said the applicant was allowed the ADU by right and the variance was only for the driveway. He said the variance was necessary to make it a better use of the ADU.

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

- C. The request of **909 West End LLC (Owner)** and **Loaded Question Brewing (Applicant)**, for property located at **909 Islington Street** whereas relief is needed to add 300 square feet of space to increase seating capacity from 36 to 54 which requires the following: 1) **Special Exception** from Section 10.440 Use #9.42 to allow occupant load from 50 to 250. Said property is located on Assessor Map 172 Lot 7 and lies within the Character District 4-W (CD4-W). (LU-25-102)

### **SPEAKING TO THE PETITION**

[Timestamp 1:22:17] The co-owner of Loaded Question Brewing Tom Bath was present. He said relief was needed to add 300 sf of space to the restaurant and increase the capacity from 36 to 54 customers. He said the brewery's current operations would not change. He reviewed the criteria and said they would be met.

[Timestamp 1:25:09] Mr. Nies referred to the drawings and asked what would change. Mr. Bath explained that the gray space would be added and a wall would be built 10 feet behind the existing wall that would be demolished. Acting Chair Margeson said the numbers on the drawing indicated 60 seats instead of 54 seats. Mr. Bath said the extra seats against the wall would go away.

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** [Timestamp 1:28:39]

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

Mr. Rossi said it was a minor change to an existing use that drove the request for a special exception. He said the standards were permitted by special exception, so that criterion was met. 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 use would be the same as the current one being used on the site. He said there would be no detriment to property values in the vicinity because the use would be consistent with what was already going on in the general vicinity and would not change the property values. He said granting the special exception would pose no creation of a traffic safety hazard, noting that the traffic in and out of the vicinity was consistent with what was occurring in the general vicinity and would not add any significant congestion. He said it would pose no excessive demand on municipal services because the use was already occurring on the site and would not present any new demands on municipal services. He



said it would pose no significant increase in stormwater runoff because the building footprint would not change that much. Mr. Mattson concurred. He said it was a situation where at some point a cutoff number had to be chosen, but it was a minimal increase in square footage inside the existing building being attributed to the restaurant vs a future neighboring tenant, and he thought it made sense to grant a special exception.

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

- D.** The request of **145 Maplewood Avenue LLC (Owner)** and **FUEL Personal Training (Applicant)**, for property located at **145 Maplewood Avenue** whereas relief is needed to establish a health club with 2,500 square feet of gross floor area which requires the following: 1) **Special Exception** from Section 10.440 Use # 4.42 to allow a health club, yoga studio, martial arts school, or similar use with more than 2,000 sq. ft. GFA. Said property is located on Assessor Map 124 Lot 8-1 and lies within the Character District 5 (CD5) and Downtown Overlay District. (LU-25-107)

## **SPEAKING TO THE PETITION**

[Timestamp 1:33:16] The applicant Matt Skeffington said the facility was presently located in Bedford and that they did small group personal training for people 40 and over. He further explained the details and reviewed the special exception criteria.

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

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

Abigail Bachman said she was Mr. Skeffington's real estate broker and thought the facility would be a phenomenal amenity to the building and the downtown area.

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

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

## **DECISION OF THE BOARD** [Timestamp 1:38:44]

*Mr. Nies moved to **grant** the special exception for the petition as presented and advertised, seconded by Mr. Mannle.*

Mr. Nies said it was a use allowed in the area by special exception and that it would pose no hazard to the public on account of potential fire, explosion, or release of toxic materials. He said there was no evidence that it would pose a detriment to property values in the vicinity or a change in the essential characteristics of the neighborhood because the training center would go into an existing building and there would be no changes to the building's external features. He said granting the

special exception would pose no creation of a traffic hazard because it was unlikely that eight training group participants at one time would affect the traffic in that area. He said it would pose no excessive demand on municipal services and no impact on police, fire protection, and schools because the building was already serviced by water, sewer, waste disposal, and so on. He said there would be no impact on stormwater runoff because the lot had already been built in a way that handled stormwater runoff onto adjacent properties and streets and there would be no physical changes to the building. Mr. Mannle concurred and had nothing to add.

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

- E. The request of **Mark N and Julie S Franklin (Owners)**, for property located at **168 Lincoln Avenue** whereas relief is needed to demolish the rear deck and construct a one-story addition, demolish and reconstruct the front porch, construct a kitchen addition, construct a bulkhead, and construct dormers which require the following: 1) Variance from Section 10.521 to allow a) 7.5 foot front yard where 15 feet are required, b) 7 foot right yard where 10 feet are required, and c) 32% 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 113 Lot 6 and lies within the General Residence A (GRA) District. (LU-25-109)

## **SPEAKING TO THE PETITION**

[Timestamp 1:42:15] Attorney Derek Durbin was present on behalf of the applicant. He said the 2023 requested variances to demolish the existing detached garage and nonconforming rear deck and to construct an attached garage addition with two living spaces above it were approved in 2023 but proved to be too costly, so they were back with a redesign. He said they wanted to keep the existing detached garage but remove the rear deck and replace it with a small addition for just a mudroom and office space. He said they also wanted to replace the front porch in kind and the bulkhead. He said the redesign would result in less building coverage and that nothing had changed materially. He reviewed the criteria and said they would be met.

[Timestamp 1:48:50] Mr. Mannle confirmed that the existing two-car garage would not be demolished and rebuilt. Mr. Rheame asked if the bulkhead drove the setback concern and was greater than 18 inches above grade. Attorney Durbin agreed.

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** [Timestamp 1:50:39]

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

Mr. Rheume noted that the applicant previously had approval from the Board for something more extensive and that the overall coverage, while still above the 25 percent maximum allowed, was less than what was currently on the property. He said the new modest addition on the back would be a single story and consist of a mud room and an office. He said the front porch drove the front setback relief requirement but that the porch was a characteristic of the neighborhood, so allowing the applicant to rebuild it made sense. He said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said the largest relief asked for was the replacement of the existing front porch, but it was an existing element of the building being preserved. He said the side yard setback was mostly driven by the new bulkhead, which was a small imposition to the setback. He said it came down to overall lot coverage and noted that several other properties in the vicinity had a 25 percent lot coverage allowance. He said the applicant was also reducing the overall coverage of the current property and adding only a small first-floor addition. He said substantial justice would be done because nothing the applicant was asking for would outweigh the general public's need for strict adherence to the ordinance. He said granting the variance would not diminish the values of surrounding properties because the home would look like it did before, but only with a modest addition on the back and a rebuilt porch on the front that would continue to add character to the neighborhood, and the existing garage would not change. He said the hardship was that the property had special conditions due to the home already having an existing orientation on the property by being pushed up toward the front of the property, which was not an atypical neighborhood characteristic, so the front relief was dictated by the property's existing conditions. He said the bulkhead addition was a small relief, and the applicant was asking for a small lot coverage because the lot was substandard. He said many other properties faced a similar issue where it was difficult to not have some need for relief due to the sizes of their properties.

Mr. Mannle concurred. He said that, compared to what was requested in December, the applicant was only asking for a foot more in the front yard, coupled with a one percent increase in building coverage, and it was a small request.

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

- F. The request of **Tyler Garzo (Owner)**, for property located at **62 McKinley Road** whereas relief is needed to subdivide the existing lot into two lots and demolish and reconstruct the existing garage which requires the following: 1) Variance from Section 10.521 to allow a) 8,430 square feet of lot area for proposed lot 26 where 15,000 square feet are required, b) 8,430 square feet of lot area per dwelling unit for proposed lot 26 where 15,000 square feet are required, c) lot depth of 87 feet for proposed lot 26 where 100 feet are required, d) 13 foot rear yard area where 30 feet are required, e) 8,430 square feet of lot area for proposed lot 26-1 where 15,000 square feet are required, f) 8,430 square feet of lot area per dwelling unit for proposed lot 26-1 where 15,000 square feet are required, and g) lot depth of 88 feet

where 100 feet are required. Said property is located on Assessor Map 268 Lot 26 and lies within the Single Residence B (SRB) District. (LU-25-111)

### **SPEAKING TO THE PETITION**

[Timestamp 2:06:19] The owner Tyler Garzo was present and said that anything built on the proposed subdivided new lot would be by the buyer. He said a few abutters thought the project was reasonable and that two other abutters were interested in buying the lot and building on it. He said other lots in the neighborhood were subdivided. He said a potential building on the new lot would meet the ordinance and fit the neighborhood. He reviewed the criteria.

[Timestamp 2:13:15] Mr. Rheume asked for more explanation about the neighborhood IDs. Mr. Garzo said the 114 and 133 were just references in the tax assessor maps. Mr. Rheume asked if the hatched area on the plot plan was intended to represent the 30-ft setback requirement. Mr. Garzo explained that the dotted line that slightly overlapped the house was the 30-ft setback and the 13-ft aligned with the deck. Mr. Rheume asked if the garage would be kept out of the 30-ft setback. Mr. Garzo said that a little bit of the garage would be just a part of it but that it could be moved slightly forward. It was further discussed. Mr. Rheume verified that the primary portion of it would be within the 30-ft setback. Mr. Mannle asked how many lots in Elwin Park were less than 8,500 sf. Mr. Garzo said there were around 25 lots out of a total of 291 lots. Mr. Mannle said the 15,000 sf lot was irrelevant to the applicant's request because he wanted two lots of less than 8,500 sf. Mr. Garzo said he looked at it as lots that were not 15,000 sf in SRB requests. Acting Chair Margeson said the second lot did not currently have a building on it and asked how big a house would be that would not require zoning relief. Mr. Garzo said he took the footprint of his house that was under 1,000 sf and placed it into the required yard setback to show that there was space to put the same house in the proposed lot. Acting Chair Margeson said it seemed that less than 25 houses in the area had less than 15,000 sf, and she asked how the benefit to the applicant outweighed the public's loss. Mr. Garzo said the community would benefit from some level of density in a largely open space because he would not have to ask for variances to clear additional land or go into wetlands.

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.

### **DISCUSSION OF THE BOARD [Timestamp 2:22:02]**

Mr. Mattson said it was clear that someone could build a reasonable single-family home on the property but that it was just a matter of weighing whether it was worth creating two new lots that were similar in size to neighboring lots but those lots were nonconforming. Mr. Mannle said the applicant was asking for two lots that were less than 8,500 sf but did not know how many lots in Elwin Park were that small to give it some flavor of the neighborhood. He said he was not aware of

any push to start subdividing 15,000 sf lots in Elwin Park. He said if the lot were larger or the applicant wanted to place an ADU on it, there would be no problem. Mr. Nies said the applicant was asking for a .19 acre lot but that several lots down McKinley Rd were .20 or .21 and the lots in the Coolidge Dr area were larger. He said he struggled with how to reconcile the broader neighborhood with what was in the immediate vicinity of the lot. Mr. Rheume said the properties in the applicant's neighborhood were about .35 to .4 of an acre. He agreed with the applicant that his existing home was sided to one side of the corner property and some of the other properties in the neighborhood were more depth oriented, but he said it was still a lot of relief asked for. He said the building envelope on the new proposed lot was also a concern because it was a tight building envelope. He said he was fearful that in the future, the applicant or a future owner would ask for a deck or something outside of the building envelope. He said the overall property size was just too small, which would put the applicant in a much smaller percentile than the neighborhood as a whole and out of character with the more micro-neighborhood portion around the property. He said it wouldn't work out with the front and rear setbacks. He noted that the current main tool for additional housing was ADUs, and from a two-lot standpoint, he thought it was asking for too much. Acting Chair Margeson said she would not support the application because of the building envelope on the second lot. She said she did not know where a driveway could be placed on the lot without going into the building envelope and that it was too close to the lot in back of it.

#### **DECISION OF THE BOARD [Timestamp 2:32:01]**

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

Mr. Rossi said a lot of relief was requested and thought it should be a high hurdle to take a conforming lot and turn it into two nonconforming ones. He said in past cases, two created nonconforming lots were not that nonconforming, and he did not think that dividing the lot into two would be consistent with the character of the immediate neighborhood, which included the other corner lots in that same intersection of McKinley Rd or some of the other lots within a tight radius of the property in question. He said the changes in law regarding ADUs obviated the need for subdividing a lot like the applicant's to achieve some of the benefits that were stated. With regard to substantial justice, he said whether those were really relevant to the zoning ordinance or not was another question but thought there were other ways to achieve that, like an ADU. He said the application primarily failed on the hardship criteria because there was nothing truly unique about the property that required the variance to allow the lot to be subdivided in order to enjoy the property or to be consistent with the characteristics of the surrounding lots. Mr. Rheume said the variance request also failed the first two criteria because the applicant wanted to create two lots that would be possibly some of the smallest in the micro neighborhood and would change its characteristics as well as those of the general neighborhood, and the building envelope that would result would be prohibitive within the ordinance's current setback requirements.

*The motion to deny **passed** by a vote of 5-1, with Mr. Mattson voting in opposition.*

- G.** The request of **420 Pleasant Street LLC (Owner)**, for property located at **420 Pleasant Street** whereas relief is needed to relocate the egress door 1 foot from the left side yard which requires the following: 1) Variance from Section 10.521 to allow 1 foot left side yard where 10 feet are required; 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 102 Lot 56 and lies within the General Residence B (GRB) and Historic Districts. (LU-25-112)

### **SPEAKING TO THE PETITION**

[Timestamp 2:36:07] Attorney Tim Phoenix was present on behalf of the applicant, with owner Jeff Semprini and project architect Mark Gianniny. Acting Chair Margeson noted that the application had two variance requests, one from the law firm and one from McHenry Architects. Attorney Phoenix clarified that one submission was from 2021, when McHenry Architects represented the former owner and got some relief. He said the lot was 484 sf and was up to five residential units before the former owner converted it to three units. He said Mr. Semprini bought the property in 2025 after a fire and was continuing to rehabilitate the building and rebuild the addition. He said the dormer's side setback was approved to be one foot, but they wanted to change the existing door to a French door for safety and aesthetic reasons. He reviewed the criteria in detail.

[Timestamp 2:49:51] Mr. Mattson referred to the criteria of hardship and substantial justice and said that Attorney Phoenix referenced Walker v the City of Manchester, but he wondered whether the case of Belander v the City of Nashua applied because Attorney Phoenix said the case represented that a variance is proper when the ordinance no longer reflects the current character of the neighborhood. He asked Attorney Phoenix for further explanation. Attorney Phoenix said another lawyer in his firm came up with that and that he wasn't 100 percent sure about its application, but the point was that the area has a lot of old homes that are very large and close to the lot line, so the owner was asking for a small amount of relief for a building that already significantly violated the side setback. He said there were other buildings in the area that were similarly situated, so an argument legally existed that if the neighborhood does not reflect what the zoning requires, a variance can be obtained for that. He noted that their request was very minor.

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** [Timestamp 2:52:02]

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

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 would remain the same and would not conflict with the purpose of the ordinance because that side of the building had existed for hundreds of years and it would not alter the essential character of the neighborhood because it would not be visible from the street and would barely impose on what was already there. He said substantial justice would be done because the benefit to the applicant would not be outweighed by harm to the general public. He said the rehabilitation of the property and dwellings made sense because it would benefit the applicant, and there was no evidence that it would harm the public. He said granting the variances would not diminish the values of surrounding properties because the building was being renovated and its value would be improved. He said literal enforcement of the ordinance would result in an unnecessary hardship due to the special conditions of the property, and there was no fair and substantial relationship between the purposes of the ordinance and the specific application to the property. He said the building had existed well before the zoning and had not been a problem, so the light, air and privacy were reasonable for the location, and the building was not visible from the street. He said the proposed use is a reasonable one and that it would still be a multi-family residential building with a few reduced units and with minimal changes visible from the street. Mr. Nies concurred and had nothing to add.

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

## **ADJOURNMENT**

The meeting adjourned at 9:55 p.m.

Submitted,

Joann Breault  
BOA Meeting Minutes Taker