

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

7:00 P.M.

October 21, 2025

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

MEMBERS EXCUSED: Thom Rossi

ALSO PRESENT: Stefanie Casella, Planning Department

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

I. APPROVAL OF MINUTES

A. Approval of the September 16, 2025 meeting minutes.

Mr. Rheame asked that the phrase on page 7, top paragraph, have the word ‘owner’ added after the word ‘property’ so that the amended sentence reads: “He said the property owner would want to mitigate the flooding issue so that the property could be used.” In the same paragraph, he asked to remove ‘Partridge Street’ from the phrase ‘Partridge Street and Pray Street sides’ so that the amended sentence reads: “He said he had concerns about putting pavement right up against the neighboring property line but that the applicant would provide a more respectful setback on the Pray Street side.” He asked that the second paragraph on page 9 be revised to change the word ‘Board’ to ‘application’ The amended sentence reads: “He said the included condition put the application into the review of the experts who develop and approve the plan.” On page 11, he asked that the word ‘second’ be added before the second ‘property’ word. The amended sentence reads: He said he thought the applicant was asking for a fair amount of relief, but there were unique conditions to the property because it was a small lot surrounded by lots of woods that, due to the wetlands, a paper street never got built and the second property might not get developed in the future.

Mr. Nies referred to the following sentence on Page 1: “Chair Eldridge noted that there were three Requests to Postpone, Petition D for 28 Whidden Street, Petition E for 51 Morning Street, and Petition G for 86 South School Street. She said they would be postponed to the October 21 meeting. (Note: there was no motion or vote)”. He asked that the sentence ‘In accordance with the rules of the Board, they were postponed to the October 21 meeting” replace the last two sentences so that the amended paragraph reads: “Chair Eldridge noted that there were three Requests to Postpone, Petition D for 28 Whidden Street, Petition E for 51 Morning Street, and Petition G for 86 South

School Street. In accordance with the rules of the Board, they were postponed to the October 21 meeting.” Vice-Chair Margeson asked to change “Chair Eldridge’ to ‘Acting Chair Margeson’ on Page 16. The amended sentence reads: “No one else spoke, and Acting Chair Margeson closed the public hearing.”

*Vice-Chair Margeson moved to **approve** the September 16 minutes as amended, seconded by Mr. Rheaume. The motion **passed** unanimously, 6-0.*

II. OLD BUSINESS

Mr. Nies recused himself from the petition.

- A. The request of **Charlie Neal and Joe McCarthy (Owners)**, for property located at **28 Whidden Street** whereas relief is needed to construct an addition to the rear of the structure which requires the following: 1) Variance from Section 10.521 to allow a) 42% building coverage where 30% is allowed, b) 11 foot rear yard where 25 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 64 and lies within the General Residence B (GRB) and Historic Districts. (LU-25-127)

SPEAKING TO THE PETITION

[Timestamp 7:54] The applicant’s representative designer Amy Dutton requested that the petition be postponed to the following week because there were only five Board members voting.

DECISION OF THE BOARD

*Mr. Rheaume moved to **postpone** the petition to the October 28 meeting, seconded by Mr. Mattson. The motion **passed** unanimously, 5-0, with Mr. Nies recused.*

Mr. Nies returned to his voting seat.

- B. The request of **Carrie and Gabriel Edwards (Owners)**, for property located at **51 Morning Street** whereas relief is needed to demolish the existing garage and construct a new attached garage with office space which requires the following: 1) Variance from Section 10.521 to allow a) 51% building coverage where 25% is allowed, b) 4 foot left side yard where 10 feet are required, c) 3.5 foot rear yard where 20 feet are required; d) 21.5% open space where 30% is 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 163 Lot 16 and lies within the General Residence A (GRA) District. (LU-25-125)

SPEAKING TO THE PETITION

[Timestamp 10:07] Attorney Monica Kaiser was present on behalf of the applicant, with Paul Dobberstein of Stakes & Stone Land Surveying. Attorney Kaiser gave the board a revised colored version of the site plan. She said the property was a narrow 44-ft wide one and that the primary home was a New Englander that was expanded to the back. She said the current garage was impacted by a tree and that there was also an area between the current house and the garage that the owner wanted to fill in and extend the garage forward. She said they proposed to remove the existing garage and replace it with a 2-story structure that would connect to the existing home. She said the project would bring the new garage farther from the side and rear setbacks and improve the overall open space. She said the home was smaller than most of the other in the neighborhood.

[Timestamp 15:52] Vice-Chair Margeson asked if the raised patio would replace the existing open space. Attorney Kaiser said there would be no change to the existing patio. She further discussed the new garage and said the view of the house and addition from the front would not change much but would be more noticeable from the rear. Vice-Chair Margeson said the photo did not show the structure toward the right side of the property. Attorney Kaiser said it might be the angle, and she showed the Board photos relating to a 2004 application.

[Timestamp 19:53] Mr. Nies said that in 2004, the Zoning Board approved an addition that resulted in 38 percent lot coverage, yet the current conditions stated that it was 41 percent. He asked what changed. Attorney Kaiser said the proposal in 2004 was to remove Addition No. 1 and that the photos identified which addition that was. She said Addition No. 1 was sort of the connector from the front of the house to the back area. She said she did not know what may have changed and how building coverage was calculated, but it appeared that the setback information did not change much. She said the information presented was not a survey and that it did not look like Addition No. 1 expanded in size at all. Ms. Casella said the change in inches was a typical conservative rounding that the City Staff did to account for any discrepancy. She said the Board could stipulate that the approval was for 3.8 feet. Attorney Kaiser said the building coverage exceeded or approached 50 percent coverage for other homes in the area. Mr. Mannle asked when the raised patio was put in. Attorney Kaiser said looked like it was there in 2004. Mr. Mannle asked how much of it was raised. Attorney Kaiser said it had to be less than 18 inches. Mr. Mannle said about half the patio was less than 18 inches and maxed out at about two feet but still counted as open space. It was further discussed. Vice-Chair Margeson asked if the small structure that went back to the other structure in the patio area was on the land. Attorney Kaiser said it was but that the more recent revisions in building coverage may apply differently. She reviewed the criteria and said they would be met.

[Timestamp 37:42] Mr. Rheume said a lot of the reasoning for meeting the criteria seemed to rest around adding only so much square footage, and part of the Board's concern was the intensity of the proposed square footage. He said a substantial 2-story addition was proposed to replace a 1-story garage and would have an office in addition to providing storage. He said the proposed northwest elevation would be seen by the neighbor to the rear of the property, and the 2-story structure would be set back less than four feet away from the property line. He asked why Attorney Kaiser thought

that would not impact light and air, overdevelopment, and so on. Attorney Kaiser said Woodbury Avenue was higher in grade, and the two houses on Woodbury Avenue were much longer lots. She said there was a greater distance between those two homes and the project. Mr. Rheume asked if the applicant felt that there would be no harm to the general public by granting the relief. Attorney Kaiser said that adding onto a single-family home, given the circumstances on the lot and the longstanding nonconformity of the lot, would not harm any of the abutting properties.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DISCUSSION OF THE BOARD [Timestamp 42:52]

Mr. Mannle said the applicant was using the raised patio as open space and said half of it was greater than 18 inches. He said the Board had previous discussions about a raised patio or outdoor space that was more than 18 inches being considered a building and not open space. Ms. Casella said anything above 18 inches is considered a structure and that the definition of open space was gray, as far as raised patios. She said the patio was pervious and did not encompass more than 50 percent of the total open space calculation, so it did not require a variance. Mr. Rheume said the applicant was trying to put a lot onto a small property, which was already significantly developed, and they were proposing to replace the garage with something quite a bit taller. He asked if there was enough justification to put a substantial 2-story addition right along the back property line and taking up the building coverage. He discussed GRC and GRA zone setbacks and said the applicant was fortunate that the property behind them was at a higher elevation than Morning Street, which probably reduced some of the impact of the 2-story addition, but he felt that it was a lot of intensity on a very small lot. Mr. Mattson said the project was taking a step back and the patio was open to the sky and pervious. He said the overall effect would not be impacted. He said the proposed addition would happen in infill away from the edges, and it would connect a space that was already there. He said the addition was a decent size and would be in the central portion of the structure, and there was also a significant grade change. Mr. Nies said the setback changes were minor but thought the big issue was the building coverage. He said there was at least one other lot on the street that had over 50 percent lot coverage, but many of the other lots were in the 35-40 percent range. He said the applicant's lot was significantly bigger but due to the slope would have little or no impact on the people on Woodbury Avenue. He said the addition would also be set back from the street, unlike most of the other buildings, which would help with the change in lot coverage. He said he struggled with the lot coverage at 51 percent, however. Vice-Chair Margeson said the addition was too much for the lot. Mr. Rheume said the change was on the back end of the property and very near the property line, which he thought would be impactful. He said he would have liked more definitive information from the applicant on the conditions of the neighborhood that would indicate that 50 percent coverage was not that much out of line. He said a specific map or visual would have made for a more convincing argument.

DECISION OF THE BOARD [Timestamp 57:21]

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

Mr. Rheume clarified with Mr. Mattson that the motion was for 3.5 feet of relief for the rear yard as advertised. 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 project would not have a huge effect on the public interest because the bulk of the addition would not be very visible to the public, and it would not be contrary to the public interest due to the orientation of the surrounding neighbors. He said the spirit would be observed. He said the lot area was half the size of what was required, so the proposed home with the addition on a conforming lot would be half that building coverage, which was significant because the lot was smaller than surrounding properties. He said substantial justice would be done because the benefit to the applicant would not be outweighed by any harm to the general public or other individuals, and the addition would be beneficial to the applicant. He said granting the variances would not diminish the values of surrounding properties because the home would still be a single-family one with new construction, and a portion of the lot would not be very visible from most public locations or the abutting neighbors. He said literal enforcement of the ordinance would result in unnecessary hardship and that there was no fair and substantial relationship between the purpose of the ordinance and the specific application to the property, and the proposed use was a reasonable one. He said the proposed use was still a single-family home with an addition, and light, air and privacy would be preserved. He said the hardship was based on the home and addition being toward the center and the back, the grade change in the rear-abutting property, the layout of the abutting structures, and the fact that the lot was small and narrow.

Mr. Rheume concurred. He said what was presented as 3.8 feet away from the back property line and was advertised as 3.5 feet, so the Board expected the applicant to make the 3.8 feet, but if the applicant found himself a little bit closer, he had the margin that the ‘as advertised’ gave him. He said Morning Street was very dense, and the applicant was asking to add some density, but it was to the back side of the lot and the mitigating factor was the grade change. He said there were differences indicating that it was in the applicant’s favor to build a substantial 2-story addition.

*The motion **passed** by a vote of 5-1, with Vice-Chair Margeson voting in opposition.*

Chair Eldrige recused herself from the following petition, and Vice-Chair Margeson was Acting Chair.

- C. The request of **Brian T and Kyle M LaChance (Owners)**, for property located at **86 South School Street** whereas relief is needed to demolish the existing porch, construct an addition with a deck, and replace an existing flat roof with a slanted roof on the existing dwelling which requires the following: 1) Variance from Section 10.521 to allow a) 7 foot side yard where 10 feet is required, b) 14 foot rear yard where 25 feet is required, c) 31% building coverage where 30% is the maximum allowed, d) 24 % open space where 25% is the minimum; 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 101 Lot 63 and lies within the General Residence B (GRB) and Historic Districts. (LU-25-122)

SPEAKING TO THE PETITION

[Timestamp 1:07:10] The owner/applicant Brian LaChance was present. He said he wanted to remove the existing deck and replace it with another deck with an enclosed entryway that would expand by another foot. He said the lot coverage would be increased by two percent, but the open space would go to 24 percent by turning the existing three parking spaces into a yard and deck. He said there would be more pervious areas for water runoff. Mr. Rheume asked if the heat pump was left over from another discussion. Mr. LaChance said it was not counted into the open space and would be shielded from the side yard. He said it was already part of the building coverage.

[Timestamp 1:12:27] Mr. LaChance reviewed the criteria. Mr. Rheume asked what the Historic District Commission (HCD) thought about the addition. Mr. LaChance said they asked that the shed roof be changed to a gambrel roof and that a portico or copper gutter be added to a side of the house to prevent water runoff. He said the small deck and stairway were not a concern.

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 1:17:50]

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

Mr. Nies said the small corner lot was unusual and the house was on the front right side of it. He said it had a lot of asphalt, and the proposed changes would be a big improvement. He said the proposal would be a minor increase in lot coverage. He said granting the variances would not be contrary to the public interest, would not affect the health, safety, or welfare of the neighborhood, and would have no effect on light and air. He said the rear setback declined a bit, but the rear of the property abutted a neighboring parking lot. He said it would not alter the essential characteristics of the neighborhood, noting that a lot of similar houses in the neighborhood were on small lots. He said granting the variances would observe the spirit of the ordinance, noting that the neighborhood would remain a dense one but that the project would not change or affect it at all. He said it would do substantial justice because he could not see any benefit to the public by denying the variances, and denying them would prevent the public from getting the benefits of reducing the pavement coverage and would cause harm to the applicant by preventing his enjoyment of his property. He said granting the variances would not diminish the values of surrounding properties, noting that no evidence was presented that it would. He said the special conditions were the small nonconforming lot and its unusual shape and the fact that it was abutted to the rear by a large parking lot for a

multi-unit building. He said the lot had a relatively small building envelope and the existing structure was already located in the front part of the lot. He said they were all special conditions, many of which were different from other properties in the area, and he saw no fair and substantial relationship between the purposes of the ordinance and the special conditions of the property, particularly given the relatively minor relief that the applicant was asking for. Mr. Mannle concurred and had nothing to add.

*The motion **passed** unanimously, 5-0, with Chair Eldridge recused.*

Chair Eldridge returned to her voting seat, and Acting Chair Margeson returned to Vice-Chair status.

III. NEW BUSINESS

- A. The request of **Lorencic Revocable Trust (Owner)**, for property located at **209 Marcy Street** whereas relief is needed to construct a second story addition and a one story addition which requires the following: 1) Variance from Section 10.521 to allow a 12 foot rear yard where 25 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 103 Lot 2 and lies within the General Residence B (GRB) and Historic Districts. (LU-25-120)

SPEAKING TO THE PETITION

[Timestamp 1:22:55] Project architect Anne Whitney was present on behalf of the applicant. She gave the Board a list of abutters who approved the project. She said her client wanted to expand the main body of the Cape into a 2-story structure and said the street had mostly 2-story structures. She said her client also wanted to have a small addition with a porch and mudroom. She said the house was on the corner of Marcy and Gate Streets and noted that the primary front property line was on Marcy Street and a secondary property line was on Gates Street. She explained the new roof system and said the building would rise by seven feet.

[Timestamp 1:29:26] Mr. Nies asked if there was a front elevation. Ms. Whitney said there was but that she had not shown it because she wasn't asking for anything on that. Vice-Chair Margeson said the application needed a variance from the front and left yards and secondary yards. Ms. Casella said they were all conforming but the correct distances were not shown on the Staff Memo. She said the site plan had the correct distances and that the only yard variance needed was the 12-ft rear yard one. Mr. Rheume asked the applicant how the work sessions with the HDC went. Ms. Whitney said the Commission hated to see the Cape changed into a 2-story building but the consensus was that they would support the petition. She then reviewed the criteria.

The Board had no other questions. Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD [Timestamp 1:33:33]

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

Mr. Rheume said he shared some of the trepidation that converted a 1-story Cape into a 2-story home because there were so few Capes left in Portsmouth, but he said it was the HDC's call and that just about every other surrounding home was a 2-story one. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said the 12-ft setback for the GRB zone would normally require a 25-ft setback, so it was less than half but it was odd because the zoning ordinance stated that side yards could be small but the ordinance also liked deep back yards. He said the way the building was oriented was a mitigating factor and it would not encroach any closer in terms of foundation. He said, however, that it was a substantial increase in height from a 1-story Cape, so there was some imposition in terms of light and air, but the applicant's argument was that it was an orientation issue and the surrounding homes were 2-story ones, so the project was in keeping with the essential characteristics of the neighborhood. He said granting the variances would do substantial justice because it would allow the applicant to make a more usable home. For the general public purposes, he said there was nothing in the ordinance that said the applicant should be restricted to, due to the nature of the home's orientation relative to Marcy Street instead of Gates Street. He said someone passing by would not really perceive that type of issue and that it would look like any other long-edged 2-story home that was common in that neighborhood. He said it would not diminish the value of surrounding properties because the house would be built upwards in an existing footprint. He said the hardship was the two front streets associated with the home and the fact that there was a substantial backyard. He said the applicant just wanted to raise the house another story and that it would look like the surrounding properties. Mr. Mannle concurred and had nothing to add.

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

- B.** The request of **909 West End LLC and PWED2 LLC (Owners)**, for property located at **909 and 921 Islington Street** whereas relief is needed to construct a sign at 921 Islington Street that will be servicing the businesses located at 909 Islington Street which requires the following: 1) Variance from Section 10.1253.10 to allow a setback of 4 feet from a lot line where 5 feet are required, 2) Variance from Section 10.1253.20 to allow a sign to be erected and maintained between the heights of 2.5 feet and 10 feet above the edge of the pavements grades where a driveway intersects with a street and lies within an area bounded by (a) the sidelines of the driveway and street and (b) lines joining points along said side lines to feet from the point of intersection, and 3) Variance from Section 10.1224.90 to allow a sign advertising a product or service not provided on the lot on which the sign is

located (“off premise sign”). Said property is located on Assessor Map 172 Lots 7 & 10 and lies within the Character District 4-W (CD4-W). (LU-25-134)

SPEAKING TO THE PETITION

Ms. Casella clarified that the second variance from Section 10.1253.10 should state 20 feet instead of 10 feet.

[Timestamp 1:41:10] Mike O’Leary of Sundance Suns was present on behalf of Chinburg Properties. He said the existing sign was in the road’s right-of-way by being in front of the telephone pole. He said there would be a sidewalk running down driveway’s side for safer pedestrian access and that it would be adjacent to the property line. He said everything to the right was open space and parking and that the 921 Islington Street property would be a restaurant in the future. He said there was no place on the property for the sign, so they wanted it off the premises. He said they would maintain the setback from the front property line. He noted that the City Staff added the 2.5 to 20 feet.

[Timestamp 1:44:02] Mr. Nies asked where the new sign would be located, noting that the zoning ordinance stated that there was an area between the driveway edge and the street edge that was 20 feet from the corner where the sign was not supposed to be. Mr. O’Leary said there was a 5-ft side setback and a 5-ft front setback from the property line. Ms. Casella it was the height of the sign, and in that 20-ft setback area of the corner, it was prohibited to have a sign between 2.5 feet and 10 feet because it was a sight line issue. She said the side boundary line setback was five feet from the front and side, and the applicant was proposing four feet from the side and in excess of 5 feet from the front. Mr. Nies said he wanted to know where the sign was in relation to the triangle because it was not drawn on the diagram. Mr. O’Leary said they were going 20 feet back from the front property line, so the sign would be behind the parking lines. It was further discussed. [Timestamp 1:53:03] Mr. O’Leary reviewed the criteria.

[Timestamp 1:56:00] Vice-Chair Margeson said it was indicated that the sign was 12 feet above grade. She asked how tall the sign itself was. Mr. O’Leary said it was eight feet tall. Vice-Chair Margeson asked if the requested relief was conveyed correctly because it looked like the front yard setback was fine but the side yard setback was the problem. Mr. O’Leary said they wanted the sign as close to the property line as possible but there had to be space next to the sidewalk. Chair Eldridge said the Board had to know where the triangle was.

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 1:59:49] Mr. Nies said he had no problem with the setback issue or putting the sign on the adjacent property but was concerned about the problematic variance because he did not know where the sign was in relation to that. He said he went to the site and noticed the Louie's sign and that it was roughly in the area where the new sign would be. He said the sign might be lower but it would obscure the view of someone pulling out of the parking lot, so he was concerned about that part of the variance without knowing precisely where the sign would be in relation to the triangle. He said he was not sure that the variance was really needed unless the Planning Staff plotted it out, and if the sign was within that area, he struggled with whether to grant the variance depending where it was within the area. Ms. Casella said she did not plot it out but saw the sign's height. Mr. Nies said he would be like more information. Vice-Chair Margeson agreed and said it would be worth seeing the property. She said there was a concern with someone pulling out of the property and there would also be more development in the future.

DECISION OF THE BOARD [Timestamp 2:02:25]

*Mr. Rheume moved to **postpone** further consideration of the application to the November 18th meeting and to request that the applicant work with the Planning Staff to provide a drawing that shows the impact of the sign relative to the relief needed, specifically the relief needed to allow a sign to be erected and maintained between the heights of 2.5 feet and 10 feet above the edge of the pavement. Mr. Mannle seconded the motion.*

Mr. Rheume said the Board was concerned because they did not know where the sign would be. He recommended that in the future, the Planning Staff ensure that the applicant's information fully addresses all the criteria. He said it could also be an opportunity for the applicant to move the sign six inches back. Mr. Mannle concurred.

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

- C. The request of **35 Pines LLC (Owner)**, for property located at **295 Maplewood Avenue, Unit 1** whereas relief is needed to create a second driveway which requires the following:
- 1) Variance from Section 10.521 to allow 0% open space where 25% is the minimum, and
 - 2) Variance from Section 10.1114.31 to allow a second driveway where only one is permitted. Said property is located on Assessor Map 141 Lot 35-1 and lies within the Character District 4-L2 (CD4-L2) and Historic District. (LU-25-135)

SPEAKING TO THE PETITION

[Timestamp 2:10:25] Patrick Lavoie of 217 Austin Street was present and said he wanted to purchase the abutting lot on Tax Map 141 Lot 34 to create another driveway. He said the second driveway would provide a safe access point and reduce street parking. He reviewed the criteria.

[Timestamp 2:14:43] Vice-Chair Margeson asked if there were two units in the building. Mr. Lavoie said there were three units and that the driveway would serve the lower condo, Unit No 1.

Vice-Chair Margeson asked if there was a driveway in the back. Mr. Lavoie said there was a deck and two parking spots. Vice-Chair Margeson said the limited common areas for Units No. 2 and No. 3 would be the driveways. Mr. Lavoie said it would be their parking spots, common areas, and decks. Vice-Chair Margeson asked if those limited common areas constituted one driveway. Ms. Casella agreed. Vice-Chair Margeson asked what was currently on the second driveway. Mr. Lavoie there were a few bushes. Vice-Chair Margeson asked what part of the lot was being merged. Ms. Casella said there were two existing lots, the lot for the condos and the lot owned by Eversource for the utility pole. Chair Eldridge asked Mr. Lavoie if he would back out of that lot onto Maplewood Avenue. Mr. Lavoie explained how he could be going the other way. Mr. Rheume said the existing problem was that Unit No. 1 was part of the condo association, and he asked if it would be linked to the condo association if Eversource sold the applicant the property or if the applicant would own it. Mr. Lavoie said it would be linked to the condo association, so if he sold his unit, the new buyer could do things that the condo association could not vote on, so it would be merged. Mr. Rheume asked where in the process Mr. Lavoie was in purchasing the unit within the condo association. Mr. Lavoie said he would have a meeting with them in a few days and would address some concerns and negotiate on the price. Mr. Rheume asked Mr. Lavoie if he had a signed Purchase and Sales (P&S) agreement with Eversource. Mr. Lavoie said he had an email and that the meeting would make it go forward. Mr. Rheume asked Ms. Casella if another variance would be needed to reflect that the applicant would not meet the permitted 25 percent open space requirement. Ms. Casella said by advertising that a driveway would go there, it would be a zero percent open space end product with two driveways.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DISCUSSION OF THE BOARD

[Timestamp 2:25:35] Mr. Rheume suggested stipulating that no access would be allowed onto Maplewood Avenue. He said normally he would have expected to see a signed P&S in place before granting a variance, and that presumably the P&S agreement would be contingent upon getting Board approval for putting a driveway on it. Vice-Chair Margeson agreed and suggested two conditions: 1) the driveway shall not be accessed off of Maplewood Avenue, and 2) the approval shall be subject to a completed transaction. She said normally a P&S agreement came before the Board and that the Board was granting a variance for a property that was not owned by the applicant. Mr. Mannle said the approval could be contingent upon the P&S agreement.

DECISION OF THE BOARD

[Timestamp 2:28:45] Mr. Nies moved to grant the variance as proposed and advertised, subject to two conditions:

- 1) *The driveway shall be constructed in such a way that it does not access via Maplewood Avenue, and*
- 2) *The variance is contingent on the execution of the completed Purchase & Sales agreement of the property located on Assessor Map 141 Lot 34.*

Vice-Chair Margeson seconded the motion.

Mr. Nies said granting the variances would not be contrary to the public interest because it was a very small property, even with the addition of the lot that would be purchased, and putting a driveway on it would have no effect on the health, safety, and welfare of the public and no impacts on light and air or on the essential characteristics of the neighborhood. He said it would observe the spirit of the ordinance because it was a minor change that would help get parking off the street in the area. He said granting the variances would do substantial justice and that he could not see any benefit to the public by denying them. He said it was a small amount of open space but the lot being joined was only 200 square feet or so, and denying the variance would cause a loss to the applicant and make it more difficult for him to operate his business. He said it would not diminish the value of surrounding properties because it would be a minor change, and the only thing people would notice would be the tree's removal, which would not affect the value of surrounding properties. He said literal enforcement of the ordinance would result in unnecessary hardship because the property had special conditions. He said the existing property only had parking for two of the three condos, and there was not enough room on the property to put in a third parking space. He said that would be rectified if the applicant was able to purchase the small adjacent lot to provide parking. He said it was also a corner lot on a relatively busy street, which is why the stipulation (or condition) was required to prevent access from the property directly onto Maplewood Avenue. He said there was no real fair and substantial relationship between the purpose of the ordinance and no reason to deny a second driveway on the lot. He said there was currently zero open space, and the granting of the variance would not change the amount of open space that will be there.

Vice-Chair Margeson said, in terms of the spirit and intent of the ordinance, the health, safety and welfare was in the purview of the Board. She said she thought the access had to be off Jackson Hill as opposed to Maplewood Avenue and that the project had to go through the driveway permit process with DPW addressing that concern. She said the two conditions were very important because the Board was granting a variance for property not owned by the applicant.

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

IV. ADJOURNMENT

The meeting adjourned at 9:34 p.m.

Submitted,
Joann Breault
BOA Meeting Minutes Taker