

**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 28, 2025

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

MEMBERS EXCUSED: Thom Rossi

ALSO PRESENT: Jillian Harris, Planning Department

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

I. OLD BUSINESS

- 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)

Chair Eldridge read the petition and stated that the petition was **withdrawn** by the applicant.

II. NEW BUSINESS

- A.** The request of **Double Mc LLC (Owner)** for property located at **134 Pleasant Street** whereas relief is needed for redevelopment of the existing commercial building and construction of horizontal and vertical building expansions for a mixed-use building with below-grade parking and the relocation of drive-through teller lanes, which requires the following: 1) Variance from Section 10.440, Use #19.40 for a drive-through facility as an accessory to a permitted principle use; and 2) Variance from Section 10.331 to change the location and use of the drive-through facility. Said property is located on Assessor Map 116 Lot 30 and lies within the Character District 4 (CD4) and Historic District. (LU-25-138)

SPEAKING TO THE PETITION

[Timestamp 6:42] Attorney F. X. Bruton was present on behalf of the applicant, with project team Marie Bodi, engineer John Chagnon, and architect Tracy Kozak. Attorney Bruton said his client proposed adding a vertical and horizontal addition to the Citizens Bank property. He said they wanted to rotate the location of the drive-thru to bring the property more in compliance with the zoning, and he explained the pedestrian-friendly access points. He reviewed the criteria.

[Timestamp 18:45] Vice-Chair Margeson asked if pedestrians, drive-through customers and vehicular traffic all would be accessing the property through the new entryway. Attorney Bruton said there would be walkways from Pleasant Street that would avoid that. He said all the parking for people going into the bank would be along the side of that portion of the building, along with access to sidewalks for pedestrians. He said they had a deeded access point through the parking lot but the main intent would be to park near the building. Mr. Chagnon said the predominant pedestrian movement from the parking lot would be out to the street or to the back alley and that he did not think people had a right to cross the property. He said the driveway layout had plenty of room for cars to maneuver. Vice-Chair Margeson asked what the applicant meant by saying they would open up the access and relocate the Court Street parking. Mr. Chagnon said the City owned the entirety of the property going out to Pleasant Street to Parrott Avenue, but then they sold off the courthouse lot and kept the deeded access. He said the owner proposed to remove the current awkward turning movement into the Parrott Avenue lot and the courthouse property, which would allow a few more parking spaces in the Parrott Avenue lot. He said it would also create a situation where people coming from Court Street who currently tended to go through the PHA housing project to get into the parking lot quicker without going through private property.

[Timestamp 25:05] Mr. Rheume asked what feedback the applicant received from the HDC about the roof cover over the drive-through. Mr. Chagnon said they met the performance standard. Ms. Kozak said they had two work sessions with the HDC and that they liked the more traditional project design. She said they would return to the HDC after getting the Board's feedback. Mr. Rheume asked what the pedestrian access to the retail in the back of the new combined building would be. Mr. Chagnon said the pedestrian experience would be one of access if coming down Pleasant Street, which would take the pedestrian to the retail and residential. He said there was another access to the banking facility further down Pleasant Street and there were parking spots accessible to the retail facility. He said the underground parking would also access the building's interior. He said there would be access through an easement that went through the fire station and the condos, and there would be connections there with a pocket park. Mr. Rheume asked if there would be access to the retail space on the parking lot side. Mr. Chagnon said there would be a sidewalk and an entrance. Mr. Rheume said a decision was previously made by the Board to allow the lot to serve as a parking lot for another property owned by the same owner. He asked what the status of that was and how that parking requirement was incorporated into the design. Attorney Bruton said four spaces were reserved for that in the underground parking. Mr. Nies said the roof drawing showed parking spaces in the travel lanes, and a leftover drawing from the Planning Board showed a different layout that had 27 surface parking spaces. He asked which one was accurate.

Ms. Kozak said the roof plan was to really show only the roof and that it should be disregarded. Mr. Nies referred to a comment made about the Planning Board seeming to like the changes to the traffic flow to the left-hand side of the property, but he said they did not see the location of the drive-through lanes as they were shown tonight. Mr. Chagnon said the plan that was brought to the Planning Board had the drive-through in the same location as it was now presented, but the window was being moved to the other side, so it wasn't exactly the same. He said the project team decided that there was a better location for the drive-through if they had to move it to get relief.

Chair Eldridge opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION [Timestamp 34:33]

No one spoke.

SPEAKING IN OPPOSITION TO THE PETITION

Peter Smith of 206 Court Street said he was an abutter and represented the 160 signatures on the Portsmouth on change.org website. He said the hardship was a self-created one. He said the ordinance stated that a lawful nonconforming use may not be extended, enlarged, or changed, except in conformity with the ordinance. He said the applicant did not identify any unique site locations and that the supposed hardship stemmed from tenant preference and property size. He said the property could accommodate a conforming use without a drive-through.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Elizabeth Bratter of 159 McDonough Street said drive-throughs are not allowed uses in CD5 and CD6 zoning. She said the bank and its drive-through were proposed to be moved to the front of the lot and face a historic house on Pleasant Street. She said thousands of other banks operated in stores and did not have drive-throughs. She said local parking spaces would be lost.

Patricia Bagley of 213 Pleasant Street said she walked the property and that it seemed like it would be a hodgepodge and not safe. She said that the drive-through was not currently noticed by people because it was set back and that the landscaping gave it a calm experience. She said the applicant was proposing to move the kiosk way up front, and she thought it would be too many drive-throughs and unsafe. She said the Parrott Lot belonged to the City. She said driving through there and around the back would be overextending and thought the petition should be denied.

Attorney Bruton said the drive-through was there and that they were proposing to move an existing non-conforming use and that there would be underground parking. He said maintaining the drive-through made sense because if it was eliminated, it would take away something that reduced the stress of any parking situation. He said the hardship test was whether it was an unnecessary hardship and not just a hardship. He said the property was unique, and even though the owner did not own the Parrott Avenue parking lot, the building's location was near it. He said they would

improve the access by eliminating the drive-through lanes that were nonconforming and that they would also have a more conforming structure. He said the current use required pedestrians to walk through the drive-through lane, which was a safety issue they were addressing, and they were adding other pedestrian access points to the building as well.

Mr. Rheaume said it was indicated that the owner was below what was needed for parking and that they might be seeking a parking Conditional Use Permit from the Planning Board. Attorney Bruton said their point of reference with the City Staff was that the HDC would have to know if the drive-through could just be rotated. He said they did not anticipate asking for significant parking relief through a Conditional Use Permit. He said the underground parking would also be significant. Mr. Mattson asked if the net change in asphalt would decrease or increase with the change in the drive-through's orientation. Mr. Chagnon said there would be less pavement dedicated to the drive-through. The improved vehicular circulation near the courthouse was further discussed.

Elizabeth Bratter said there were 46 units proposed and 41 parking spaces. She said retail space outside of the DOD required one spot for every 300 square feet, so that was 30 more parking spaces. She said the applicant really needed 100 spaces but were providing 41, five of which would be used by someone else. She said they would need a parking Conditional Use Permit.

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

DISCUSSION OF THE BOARD

[Timestamp 56:37] Mr. Nies said the Planning Board was presented a different plan that said the applicant expected a total of 83 parking spaces and that the total required was 46 spaces. He said the applicant also said they had 37 spaces outside, but now they had 11 spaces. He said it looked like the applicant had a small excess of between 5-6 spaces in the design and that the Board should not get too hung up on parking. Mr. Rheaume said the ordinance's intent was to eliminate the allowance for drive-throughs in the CD4 and CD5 zones in a desire to move the downtown core areas more toward pedestrian use and other types of transportation. He said that not requiring as much parking within downtown structures was also another issue. He said he agreed with the applicant that a unique characteristic of the property was that it abutted a City parking lot, but his concern with what was proposed was that it segregated the pedestrian experience and created a pedestrian island for the back property. He said the proposed drive-through cut the pedestrian flow and that it came down to how the variance request set the property up in terms of a pedestrian experience.

*Mr. Mannle moved to **suspend** the rules so that the public hearing could be reopened, seconded by Mr. Nies. The motion **passed** unanimously, 6-0.*

*Mr. Mattson moved to reopen the public hearing, seconded by Mr. Nies. The motion **passed** unanimously, 6-0.*

Erin Proulx (via Zoom) of 118 Pleasant Street asked the Board to deny the variance because it had conflicts with the the zoning ordinance and the City's Master Plan for the pedestrian-oriented downtown.

Mr. Chagnon said the walkway going up Pleasant Street could be connected to another walkway and that sidewalks could be added. Ms. Kozak said the drive-through faced the Langdon House and that it would be screened with landscaping and would be set back at the maximum 10 feet allowed.

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

DECISION OF THE BOARD [Timestamp 1:08:27]

Vice-Chair Margeson said she agreed with a lot of Mr. Rheume's concerns. She said there was an existing drive-through on the property but the project was an intense one due to the redevelopment of it. She said having a drive-through combined with the entrance to the property and with people parking on the property would be problematic from a health, safety and welfare view. She said the CD4 and CD5 zones were pedestrian friendly and allowed the public to get invited into the property. She said there would be a huge swap on one side of the property that would be dedicated to vehicle access into the property, but adding a drive-through would be problematic. Mr. Rheume said he saw it as a pedestrian path that would have to cross through an ATM queueing line, a drive-through queueing line, and through a path to get to the parking garage and other parking spots. He said he did not think the property would create an inviting and walkable sensibility. He said several banks downtown did not have drive-throughs.

*Mr. Mattson moved to **grant** the variances for the petition as presented and advertised. No one seconded.*

Mr. Mattson said the area was a multi-modal character district that could be accessed by car, bike, foot, and so on. He said a lot of the character-based reasons including the maximum of a 10-ft setback from Pleasant Street were for the pedestrian experience, and the project proposed moving the drive-through away from Pleasant Street. He said people were not supposed to walk across someone else's property. He said the proper way to leave Parrott Avenue would be onto City property and easements, so he thought the proposed place to put the drive-through was appropriate and that it was the only variance being asked for. He said the big lot was unique and adjacent to the municipal lot, and the curb appeal from Pleasant Street would be improved.

[Timestamp 1:14:13] *Mr. Mannle moved to **deny** the petition as presented and advertised, seconded by Mr. Rheume.*

Mr. Mannle said he agreed with Mr. Rheume's and Vice Chair Margeson's comments about the drive-through and that he felt that the drive-through was an afterthought to keep the bank. He said access was opened up to the courthouse for nine parking spaces, so now there was an access from the court for Pleasant Street and an access to the garage. He said granting the variances would be

against the public interest and would not observe the spirit of the ordinance. He said the City wanted to get rid of drive-throughs downtown. He said those two criteria were not met and that possibly the hardship criterion was not met because the application did not indicate why the drive-thru had to be moved. Mr. Rheaume said the petition failed the first two criteria. He said the ordinance wanted to reflect what was already in the neighborhood and what the desire was for the future of a particular neighborhood. He said continuing the drive-through use that was no longer allowed in the area was in violation of the characteristics of the neighborhood as well as the spirit of the ordinance. He said the amount of parking was not the issue and that it came down to the ability to connect the whole proposed structure, which was substantial in a fully pedestrian way, and the ATM/drive-through was preventing that.

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

- B.** The request of **Tyler Garzo (Owner)** for property located at **62 McKinley Road** whereas relief is needed to construct a detached 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 268 Lot 26 and lies within the Single Residence B (SRB) District. (LU-25-136)

SPEAKING TO THE PETITION

[Timestamp 1:19:54] The owner/applicant Tyler Garzo was present. Chair Eldridge whether Fisher v. Dover should be considered. Mr. Nies said he did not feel that Fisher v. Dover applied because the previous request was to split the lot into two and the Board had asked why it could not be an ADU. He said the applicant was doing what the Board suggested. Mr. Garzo said he was proposing a detached ADU and that the variance request was for a second driveway to serve the ADU. He said the Board approved something similar at 2 Sylvester Street. He reviewed the criteria.

[Timestamp 1:24:52] Mr. Nies asked what the timeframe was for building the ADU. Mr. Garzo said his builder was ready to move and would build a standard rectangular Cape Cod in character with the neighborhood. Mr. Nies said an alternative might have been a driveway between the two proposed buildings that came off Coolidge Street so that there would only have to be one driveway. Mr. Garzo said putting the driveway next to the residence would help obscure parked cars and that his neighbor did not object to the second driveway. Mr. Mannle asked Ms. Harris if the ADU ordinance allowed for a different address to a detached ADU. Ms. Harris said it did. Mr. Mattson said it would be technically the same address but could be called 'A' or 'B' and that the ADU could have separate electric meters but not separate water or sewer.

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 1:28:12]

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

Mr. Rheume said the ADU was allowed and that its orientation on the property would get worked through. He said it came down to creating the second driveway, especially because the applicant was burdened by two 30-ft front yard setbacks that pushed the ADU away from the property line and made using the existing driveway access more problematic. He said the Board also did not want driveways right next to each other, and the applicant was proposing that the two driveways would be spread out the full length of the property and would point in different directions. He said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said substantial justice would be done because there was a public interest in not having driveways too close to a corner, which could cause traffic issues. He said granting the variance would not diminish the values of surrounding properties because it was just a driveway along the side of the property, which was allowed. Referring to the hardship, he said what was different about the applicant's property from others in the neighborhood was the fact that it was a long and narrow corner lot and was burdened by a secondary front yard that pushed the DADU farther away from the road and made using the existing driveway impractical. Mr. Nies concurred and said that one of the public comments received by the Board indicated a concern that the structures would be split into two lots with separate residences in the future. He noted that the Planning Ordinances do not currently allow an ADU to have separate ownership. Mr. Rheume agreed.

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

Mr. Rheume reused himself from the following petition.

- C. The request of **ZJBV Properties LLC (Owner)** and **Jason Michalak (Applicant)** for property located at **180 Islington Street** whereas relief is needed to establish a personal service use for a tattoo studio which requires the following: 1) Special Exception from Section 10.440 Use #7.20 to allow a personal service use. Said property is located on Assessor Map 137 Lot 19 and lies within the Character District 4-L2 (CD4-L2) and Historic District. (LU-25-137)

SPEAKING TO THE PETITION

[Timestamp 1:35:28] The applicant said he wanted to postpone the petition to the November meeting because there were only five voting members and four votes were needed for approval.

DECISION

*The petition was **postponed** to the November 18 meeting.*

- D.** The request of **Christopher J and Rachel A Delisle (Owners)** for property located at **250 McKinley Road** whereas relief is needed to construct a second story addition to the primary structure which requires the following: 1) Variance from Section 10.521 to allow a) 23-foot front yard where 30 feet are required, b) 0-foot right side yard where 10 feet 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 250 Lot 117 and lies within the Single Residence B (SRB) District. (LU-25-139)

SPEAKING TO THE PETITION

[Timestamp 1:39:24] The owner Chris Delisle was present and said he wanted a partial second-story addition because his family was growing. He said he had a letter of support from his left side neighbor. He said a bow window would be removed and that a compressor would be needed for the new heat pumps and air conditioner and that it would all be done on the right side of the home, which was farthest from the wetland and any neighbor's bedroom. He said he also wanted to replace a 3-season porch and deck with a smaller deck and would request a Conditional User Permit from the Conservation Commission. He reviewed the criteria.

[Timestamp 1:44:50] Mr. Rheume asked what the yellow line was in the photo that appeared to be far more than 0 feet away from the window wells or side of the house. Mr. Delisle said the prior homeowner did a survey and ran a line from the front stake to the back of the property. He said the lot line was not actually zero but it was not 10 either. He said it was being used as the demarcation line of the property. Mr. Rheume said the applicant was adding a second story that had to be maintained, and he asked what the dimension was. Mr. Delisle said it was about 10 feet. Mr. Mattson asked if the stakes were official surveying ones, and Mr. Delisle agreed.

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 1:47:35]

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

- 1. The right side façade of the addition shall align with the current right side foundation line.*

Mr. Mannle seconded the motion.

Mr. Rheume said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He noted that people who might have moved to a bigger property when their family was growing were expanding on their current home instead. He said some of the light and air on neighboring properties would be decreased and that there was a maintainability issue, but the proposed second story was modest and the overall roofline was almost like a 1-1/2 story instead of a 2-story one. He said the encroachment on the front yard and right side yard would meet the characteristics of the neighborhood and that the overall feel would be a modest expansion to a single house. He said substantial justice would be done because the balancing test was in favor of the applicant and the second story would not be overly burdensome on the adjoining neighbor, whose consent the applicant had. He said the added window would be some distance away from the abutter's living quarters. He said granting the variances would not diminish the values of surrounding properties because it would be an improvement to the property. He said what was unique about the property was that the existing home was shoved to one side and not atypical in the neighborhood. He said the applicant had to go up on the right side yard and that the opposite side was where the garage was, so it made sense to build up over the existing residential portion of the property. He said the request was reasonable because it was adding onto an existing residential use. Mr. Mannle concurred and had nothing to add. Mr. Nies said much of the lot lay within the 100-ft wetland buffer, so adding onto the back was not an option and the only way to go was up.

The motion passed unanimously, 6-0.

- E. The request of **Nuchow Hartzell Family Trust (Owner)** for property located at **204 Aldrich Road** whereas relief is needed to construct an addition and ramp to the primary structure which requires the following: 1) Variance from Section 10.521 to allow a) 3-foot right side yard where 10 feet is required, b) 7-foot left side yard where 10 feet is required, c) 31% building coverage where 20% is the 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 153 Lot 26 and lies within the Single Residence B (SRB) District. (LU-25-140)

SPEAKING TO THE PETITION

[Timestamp 2:01:20] Attorney Derek Durbin was present on behalf of the applicant, with the owner Emily Hartzell. Attorney Durbin said the small 5,703-sf parcel had a small house on it and had half the required frontage. He said Leslie Hartzell was diagnosed with chronic medical conditions and had to reside in a one-story living arrangement, so the applicant wanted to build a 837-sf one-level addition to the rear of the house, He said the addition would have its own entrance and would be ADA accessible. He said an area was reserved for a wheelchair ramp in the right side yard and was expected to be 18 inches above grade. He said the shed would be removed and the bulkhead would be relocated to the left side of the home. He reviewed the criteria and said they would be met.

[Timestamp 2:12:26] Mr. Rheume said the clause in the ordinance about the replacement of components required for egress seemed more explicit than egress needed for disability purposes which would eliminate one of the two setbacks. He asked if that was discussed with the Planning Staff. Attorney Durbin said there was a discussion about ingress or egress but did not remember the specifics. Mr. Rheume asked if the other setback relief was for the bulkhead and if the applicant would come before the Board for the total coverage. Attorney Durbin said he thought it was better to apply for everything at once. 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 2:15:45]

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

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 of a continued single family home with a small one-story addition off the rear would not conflict with the purpose of the ordinance or alter the essential character of the neighborhood or threaten public health, safety, or welfare. He said light, air, and privacy would still be preserved. He said substantial justice would be done because granting the variances would be a clear benefit to the applicant for their needs and would pose no harm to the general public. He said it would not diminish the values of surrounding properties because the new addition would not be visible from the street. He said literal enforcement of the ordinance would result in unnecessary hardship due to the special conditions of the property that included a narrow lot that was half of what was supposed to be there, which drove the need for the building coverage, and the narrowness meant that the side yard setbacks were harder to achieve. He said the addition could not be put anywhere else and that the continued proposed use was a reasonable one. Mr. Mannle concurred and had nothing to add.

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

- F. The request of Trenton and Denise Sensiba (Owners) for property located at 0 and 12 Ruth Street** whereas relief is needed for a lot line adjustment which requires the following:
- 1) Variance from Section 10.521 for 20.66 feet of frontage on Map 143 Lot 16 where 100 feet is required. Said property is located on Assessor Map 143 Lots 16 and 9-1 and lies within the General Residence A (GRA) District. (LU-25-118)

SPEAKING TO THE PETITION

[Timestamp 2:19:33] Attorney Marcia Brown was present on behalf of the applicant, with the owner Denise Sensiba. She said Lot 0 was Lot 16 on the tax map and that she would refer to it as Lot 16. She noted that three neighbors sent letters of support. She said the lot was an existing legal nonconforming one that had .66 feet of frontage due to a 1971 deed where the City accepted the road and left the .66 feet of frontage. She said she advised the owners that if they had access to a prescriptive easement and there were two owners, it would be better to do a lot size adjustment to achieve fee simple ownership of access, which required expanding the frontage to 20.66 feet. She said it would take it out of legal nonconforming and granting the variance would get it back into legal nonconforming. She said the intention was to increase the frontage. She reviewed the criteria.

[Timestamp 2:29:40] Vice-Chair Margeson said the intent was to convey the lot with the new expanded street frontage for purposes of residential building, but the buffer almost came up to the front of the lot. Attorney Brown said the owners had a prepared plan that showed the house outside of the buffer. Vice-Chair Margeson said the packet showed that the 100-ft tidal wetland buffer went quite far up into the property, so the applicant was saying that they would build a house in that front corner and meet the setbacks. She said most of the land was in the wetland buffer and asked if the applicant worked with the Conservation Commission and the Planning Board. Attorney Brown said she did not believe that the application had been filed yet. Ms. Sensiba said she filed for a Conditional Use Permit but was sent to the Board first. She said the property was not in the wetland buffer, according to the wetland delineations, and that she was sent before the Board to figure out the access. She said she wanted to own the property instead of having an easement. She said the house was for sale, but easements could cause trouble when people did not get along and she wanted to avoid that. She said she would like to own the access instead of having a second driveway or more parking on the street and that she thought it would be the least complicated. Vice-Chair Margeson said easements were legal and that the issue was that by expanding the lot line, the applicant was moving the access to the driveway within the wetland zone. Attorney Brown said the idea was to put in a gravel type system to capture the street runoff. Ms. Sensiba said there was enough room for a 10-ft driveway outside of the buffer if necessary. Vice-Chair Margeson said the variance requested may affect the variance relief if the Conservation Commission decided they wanted to put the driveway in a place outside of the wetland buffer. Attorney Brown said if they moved the driveway other than where the lot access was going, they would have a decrease of value of Lot 12. Ms. Harris said no matter where the driveway access was, it would not affect what the applicant was asking for, which was to change the frontage with the lot line adjustment.

Mr. Nies asked why the applicant thought the lot line adjustment would make it easier for the City to deal with a property owner handling drainage off Ruth Street. He said it looked like the proposed work for the driveway and stormwater retention area would still be on the property line between the two properties, so the City would still have to deal with two property owners. He said the applicant was using that as an argument for justifying the lot line and that it was not clear how it would improve that situation. Attorney Brown said the bioretention component might not go forward because the City's engineering department did not seem to want to address it. She said the lot line

adjustment was to make it easier if the property was sold. Ms. Sensiba said she walked the property with the City Attorney and Public Works and it was concluded that what she wanted to put there as a raingarden was up to her. Mr. Nies said rainwater coming out of the bioretention area would still drain off Lot 12. Ms. Sensiba said it would go into an existing freshwater wetland. She said she could still put an easement in stating that the water would run into the freshwater but it would require talking to the City to see if it was something they wanted done. She said all she could do was install the permeable driveway and raingarden. Chair Eldridge said she thought the Board was being asked for the lot line because the applicant wanted the security of owning their egress.

[Timestamp 2:42:49] Mr. Rheume said there were other boards to deal with the wetlands and drainage and that this Board's concern should be whether Lot 16 was a buildable lot. He said it had not been made clear that it was the intent of what was being asked for, and that the lot was not presently a buildable one. He said the applicant was asking the Board to accept that it was a buildable lot with 20 feet of street frontage. Attorney Brown said if the owner was unable to put a house on the lot, she should have a right of waterfront access so she could canoe or kayak. She said her client was trying to expand the frontage to put the lot more into compliance, but due to the unique configuration of having a .66-ft front lot, she had to get herself out of legal noncompliance and then go back in. It was further discussed. Ms. Harris said the City Staff had not determined that it was a buildable or unbuildable lot at that point. Mr. Mattson said whether it was a buildable or unbuildable lot was not the current decision. He said if the variance was not granted, it would be the same situation, but instead of the lot realignment it would just be an easement. He said it was the same location of the driveway but was just a question of which parcel it would be on. He said if the Board denied the variance, the applicant could still propose building a house there. He said the issue was whether it made more sense doing it through an easement. Mr. Nies said the applicant was using the argument that substantial justice would be done because it would in part simplify things.

Chair Eldridge opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

[Timestamp 2:51:07] Cynthia Keenan of 61 Mill Pond Way said if the Board denied the variance, there would be an element of punishment. She said the applicant wanted to move the lot line so that they didn't need an easement, and that they already provided plenty of examples of that type of thing being done before. She said other boards would shut it down if it wasn't appropriate.

Braelyn Hilsenbeck of 101 Mill Pond Way said the project would not pose a problem and that the community's character would be enriched.

SPEAKING IN OPPOSITION TO THE PETITION

Primo Tosi of 2 Ruth Street said there were three natural drains in the neighborhood and that all the water ran to Mill Pond. He said he questioned the statement that the Planning Board approved the lot separation of Lot 16. He said the recording of the deed was approved by the Planning Board in

1988, with no mention of it being a buildable lot. He said the survey plan showed that the survey done in 2025 indicated a .66-ft piece of frontage for Lot 16, but no other document showed that the lot had frontage on Ruth Street. He said no other deeds indicated that other nearby lots had any frontage. He said the survey was done without following the deed and had flaws that had to be resolved before the Board could approve anything.

Steve Miller of 38 Thornton Street said the application had several mistakes that needed to be clarified, like the statement that the City inadvertently merged Lot 16 with Lot 12 in the past and then the lots were restored to independent status by the Planning Board in 1988. He said when the house was approved, a condition was that a large area of the original wetlands in the southern corner was to be left in its natural state. He said when the permit was obtained and the house was built, the former owners separated Lot 16 from Lot 12. He said the former owner did not want to pay taxes on the lot, so it was established as an unbuildable lot. He said granting the variances would violate the condition of the State wetland permit and would be contrary to the public interest. He said the permit also required that the development of Lot 12 have stormwater swales. He said the development of Lot 16 would only make matters worse and diminish property values.

Tony Lane of 47 Thornton Street said that in April 2024, the applicant began to destroy the wetland vegetation in Lot 16. He said the building permit for a 2 1/2-story, 3000+ sf home was not theoretical. He explained why the variance request did not meet the criteria.

SPEAKING TO, FOR, OR AGAINST THE PETITION

[Timestamp 3:25:33] Attorney Brown said there were plans recorded that incorrectly showed the 409-ft difference in the 1971 deed. She said the lots were 50 feet and her client had a frontage of .66 feet, which was the nine inches in the deed. She said the survey confirmed that there was .66 feet of frontage and that her client was trying to expand. Vice-Chair Margeson said the issue was that the lot line adjustment was for the purpose of making the lot a buildable one.

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

DECISION AND DISCUSSION OF THE BOARD [Timestamp 3:28:42]

*Mr. Rheume moved to **deny** the petition as presented and advertised, seconded by Vice-Chair Margeson.*

Mr. Rheume said the applicant was asking to move a lot line to be able to access the lot and said she would not build anything on it, so the only real purpose for accessing it was a recreational one. He asked what the City was getting back in terms of the ordinance. He said the applicant said she talked to the City about a stormwater easement that might go across the property, but there was nothing that said the City looked at it or had an interest in. He said he did not see that as a legal argument. He said the applicant was not creating a buildable lot and would have to come back to the Board for that, which would still be creating a largely nonconforming lot. He said the applicant

would get 20 feet of not-buildable lot frontage that would be in an awkward location relative to the street. He said the petition clearly failed on that criterion. He said if the applicant wanted to just continue to get simple access on occasion and use the lot in a recreational manner, it would be part of the conditions put in the sale agreement. Vice-Chair Margeson agreed. She said easements were easily written, recorded and enforced and said the applicant's argument that the lot line adjustment was needed in lieu of an easement was a futile one. Mr. Nies said he did not think substantial justice meant that the variance had to benefit the City but that it meant that the benefit to the public by denial would outweigh the loss to the applicant, which was not the argument that night. Chair Eldridge said she did not see the hardship. Mr. Mattson said the lot was not a buildable one but it would be made closer to conforming, which was an odd thing to deny. It was further discussed. Mr. Rheume said the petition failed the substantial justice test because it failed the balance test, due to the applicant wanting the minimal benefit and the detriment to what the ordinance was looking for. He said the hardship was the property's uniqueness, and if there was no intention to build on it, there really wasn't a need to recreate lot lines, especially just for recreational access. Mr. Nies said the applicant said they intended to build a structure on the lot. Mr. Rheume said he heard from the applicant that building on the lot was something they could do but that they just wanted to create an access so that they didn't have to get an easement. Mr. Mattson said the Board did not make their decisions solely based on what the applicant's pitch was. He said the Board knew that a Conditional Use Permit for a proposed building existed and it was obvious that the applicant's intention was to make it a buildable lot, but the Board's decision should be made when that intention was in the application. Mr. Nies asked what criteria were being argued by the Board for denial. Mr. Rheume said it was the spirit of the ordinance and the general character of the neighborhood. It was further discussed. Mr. Mattson said the lot line adjustment would not change the physical features of the location and would not harm the public. He said the applicant would receive the most minimal benefit as far as substantial justice, with no harm to the public. Vice-Chair Margeson said the loss to the public by granting the variance would be more significant than a benefit to the applicant. Mr. Nies said he might be convinced that the petition did not meet the spirit of the ordinance.

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

III. ADJOURNMENT

The meeting adjourned at 10:45 p.m.

Submitted,

Joann Breault
BOA Meeting Minutes Taker