

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

**7:00 P.M.**

**May 27, 2025**

**MEMBERS PRESENT:** Phyllis Eldridge, Chair; Beth Margeson, Vice-Chair; Members David Rheame; Thomas Rossi; Jeffrey Mattson; Thomas Nies

**MEMBERS EXCUSED:** Paul Mannle

**ALSO PRESENT:** Jillian Harris, Planning Department

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

**I. OLD BUSINESS**

- A.** The request of **Mezansky Family Revocable Trust (Owners)** for property located at **636 Lincoln Avenue** whereas relief is needed to demolish an existing detached garage and construct an addition to the primary structure which requires the following: 1) Variance from Section 10.521 to a) allow a 2 foot left side yard setback where 10 feet is required; b) allow a 12.5 foot rear yard setback where 20 feet is required; c) allow 39% building coverage where 25% 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 148 Lot 17 and lies within the General Residence A (GRA) District. (LU-25-27)

Mr. Nies recused himself from the petition. The applicant agreed to present the application to the five remaining Board members.

**SPEAKING TO THE PETITION**

[Timestamp 6:03] Designer Amy Dutton representing the owners was present and said they wanted to remove the dilapidated garage and build a single-floor addition. She reviewed the criteria and noted that a letter from an abutter approving the project was included in the packet.

[Timestamp 11:44] Mr. Rossi noted that Ms. Dutton said there were certain aspects of the code that forced the expansion of the footprint and lot coverage. Ms. Dutton referred to the 96 sf over existing and said she could not get in everything that the owner wanted. She said they were trying to stay as far off the rear property line as possible and reconfigured the stairs to get them away from the rear

property line. Mr. Rossi asked, relating to fitting in with the character of the adjacent properties, what the adjacent properties' percentage lot coverages were. Ms. Dutton said the abutter to the left had a legal double lot, and the other abutter's addition went farther back and that they had a garage. She said she did not know the exact lot coverage.

[Timestamp 13:48] Mr. Rheume asked if the property lines in the plot plan were based off a survey. Ms. Dutton said a survey was not done. She said the MapGeo was wrong but believed that the lot size was correct. She said the direct abutter to the backyard had a legal survey done and that there was a fence on the abutter's property that could pinpoint where that dimension was coming from. She said she dimensioned 22'10" from the back of the existing addition to the fence, and from her laser it went 25 ft to the fence. Mr. Rheume asked if Ms. Dutton therefore thought that the back property line was based off an adjoining property's survey. Ms. Dutton agreed. Mr. Rheume said the list of dimensions indicated that the existing garage had a 2-ft setback from that property line, but the drawing did not show the same dimension as the 2-ft setback to the side for the proposed new addition, and he asked where that number came from. Ms. Dutton said the line was angled and the garage was parallel to the house, so she based it off a site measure. She said she got two feet on one corner and 11 inches on another corner. Mr. Rheume said the closest dimensions would then probably be less than a foot. Ms. Dutton said she did not think that the fence was the property line. Mr. Rheume said the property was renovated in 2012 and asked Ms. Dutton if she knew what happened then. Ms. Dutton said that in 2012, someone would have gone to the Assessor's Office and would have photocopied the site plan. She said the building permit was submitted in 2012, and the garage was drawn at an angle and crossed over the property line, so she believed that the assessor took the City's site plan and that the property lines were skewed incorrectly. She said the property line went through the driveway diagonally on that plan but that it was actually straight. She said she looked at the map submitted in 2012 and found that it was off, so she was using the numbers given to her by the City a month ago. She said the assessor had told her that the number from the deed did not match what was submitted in 2012. She said she measured the entire footprint of the house and was confident in her calculations. Mr. Rheume asked if a portion of the home was torn down and replaced by a new section in 2012. Ms. Dutton agreed and it was further discussed.

[Timestamp 20:58] Vice-Chair Margeson asked if the driveway would be enough for two cars. Ms. Dutton agreed. Vice-Chair Margeson said she was concerned that the property was very tight and no survey had been done. She said there seemed to be a lot of variations as to what the property might really be and that she was uncomfortable approving it without a survey. Ms. Dutton said the left side abutter felt positive about it. She said the expense and time to get a survey done on a lot like that would feel like a hardship to the owners, and she did not think it would make a significant change. Vice-Chair Margeson said it was more about knowing exactly what the dimensions, footprint and boundaries were.

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 25:58] Mr. Mattson suggested stipulating that if the variances are approved with the 2-ft setback and the property was then surveyed and it was not two feet, the applicant would have to comply. Mr. Rheume said he wasn't sure if a survey would find something from a variance standpoint that would make a difference to him. He said normally the Inspection Department required a survey when a foundation was put in, especially for a dimension that close, so a survey would have to be done and that survey could come back with discrepancies. He said a 2-ft setback was very close, but he was in favor of the variance requests because the structure was a modest one-story addition that improved the rear setback. He said it was an increase in overall dimensions for the amount of coverage on the property, and every percent counted, but it was a relatively modern addition. Mr. Rossi said the Board did not know at this time what the percent of lot coverage was and where the boundaries were. He said he was also concerned about the incremental number of small changes in the percentage of lot coverage, which will now have brought it into a state of substantial noncompliance. He said 39 percent was significantly different from the allowed lot coverage of 25 percent. He said if he had to vote on it now, it would be a nay vote. Chair Eldridge said she would vote in favor because the lot was a tiny one on that street, and the new addition would be an improvement from the garage and would be farther back from the lot line. She said denying the petition could set up a situation where the applicant could not return with the same proposal due to a Fisher v. Dover conflict.

## DECISION OF THE BOARD

*Vice-Chair Margeson moved to **postpone** the petition pending submission of a surveyed plan to a meeting in the near future. Mr. Mattson seconded.*

It was further discussed and decided that a date for the applicant to return should be set.

*Vice-Chair Margeson **amended** her motion and moved to **postpone** the application to the June 17 meeting pending the submission of a surveyed plan. Mr. Mattson seconded.*

Mr. Rossi said he would reluctantly support the motion, noting that he was not sure that he would find the survey's additional information persuasive in reaching a decision.

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

## II. NEW BUSINESS

Mr. Nies returned to his voting seat.

- A. The request of **Jeannette MacDonald (Owner)** for property located at **86 Farm Lane** whereas relief is needed to subdivide the existing property into 3 separate lots. The proposed parent lot requires the following: 1) Variance from Section 10.521 to allow a) 28-foot rear yard setback where 30 feet is required; and b) 23-foot secondary front yard where 30 feet is

required. Proposed lot 1 requires the following: 2) Variance from Section 10.521 to allow a) 10,664 sf of lot area where 15,000 sf is required; b) 10,664 sf of lot area per dwelling unit where 15,000 sf is required; and c) 75 feet of continuous street frontage where 100 feet is required. Proposed lot 2 requires the following: 3) Variance from Section 10.521 to allow a) 11,250 sf of lot area where 15,000 sf is required; b) 11,250 sf of lot area per dwelling unit where 15,000 sf is required; and c) 75 feet of continuous street frontage where 100 feet is required. Said property is located on Assessor Map 236 Lot 74 and lies within the Single Residence B (SRB) District. (LU-25-67)

## **SPEAKING TO THE PETITION**

[Timestamp 35:35] Attorney Derek Durbin was present on behalf of the owner. He gave the Board a package of support letters that were given to the owner. He reviewed the petition, noting that the property was a huge lot for the area and had been in the same family since 1954 and then sold to the applicant's father. He said the property had a total of 408 sf of street frontage but only 161 of that was continuous on Farm Lane and there was an additional 247 sf of secondary frontage on Longmeadow Lane. He said the 1954 subdivision plan showed the original layout of the neighborhood and had three different lots then. He said the City involuntarily merged two lots at one time and the applicant acquired the other lot. He said the applicant wanted to subdivide the property into three distinct family home lots. He noted that a paper street was part of the applicant's property and extended four feet into her property, which he further discussed. He said the variance requests were relatively minor and that the lots would be the same size as most of the lots near it. He said they had a work session with the Technical Advisory Committee (TAC) to discuss the layout and had discussions with City Staff and the Department of Public Works.

[Timestamp 40:43] Vice-Chair Margeson asked for more information on the right-of-way situation. Attorney Durbin said the 10-ft dimension encompassed the new area of the proposed right-of-way. He showed the part on the diagram that was not part of the paper street area, and he said it was like a new area that would be dedicated to the City as a right-of-way. He said it would be 32 feet wide and the constructed portion would be 22 feet, with ten feet constituting the shoulder area. He said potential grading would also be done. Mr. Rheume said he was concerned about the term 'a proposed roadway easement to the City' and said it was not an easement because it would be a transfer to the City. Attorney Durbin said he believed that they settled on everything as being transferred to the City that was not part of the existing paper street, so if it was noted anywhere, it was a mistake and just a leftover notation. Vice-Chair Margeson asked if it was due to the conveyance to the City and was a fee simple. She said that drove a lot of the variance request for the existing lot and proposed lot. Attorney Durbin agreed. Mr. Nies said the submission stated that Lots 102 and 103 were merged voluntarily or involuntarily, but Attorney Durbin said in his presentation that it was involuntarily merged by the City. He asked if Attorney Durbin found evidence of anything. Attorney Durbin said they could not find evidence either way because the lots were historically described in different ways, and since the transfer, the lots were described as one. He said he could not certify that the lots were voluntarily or involuntarily merged.

[Timestamp 45:13] Attorney Durbin reviewed the criteria.

[Timestamp 50:57] Mr. Rheume said a lot of the presentation about the way the applicant was moving forward with the property did not relate to the memo in the packet. Attorney Durbin said the intent was to subdivide but that his client also wanted to preserve the rights she had. Mr. Rheume said the current application assumes that half of the paper street that might otherwise be something the applicant could claim would not be dealt with in the application. Attorney Durbin agreed and said it was just over 9,000 sf of land area considering the paper street and an additional 3,000 sf of additional right-of-way land that would be dedicated. Mr. Rheume said if the property was divided into two lots it would reduce the amount of relief down to one item. He also noted that the applicant's argument rested on the *Belanger v. Nashua* case in saying that there are so many other lots that look like the ones she wanted to create. He asked Attorney Durbin to elaborate further. Attorney Durbin said municipalities have an obligation to have their zoning reflect the current character of a neighborhood, and he further explained it. Mr. Rheume said the argument was that, other than the fact that the applicant was potentially deeding off a portion of the lots to make a right-of-way, the two new lots created would be equivalent to Lot 102 and Lot 103 of the original 1954 subdivision and could have looked like the lots in 1954. Attorney Durbin said they could be mirrored to look like that but the applicant was trying to respect the neighbors' fence and hedges and other things. Vice-Chair Margeson asked if there would be a driveway. Attorney Durbin agreed. Vice-Chair Margeson said Longmeadow Road was a paper street that the owner had rights to, and she asked if it was possible that the Planning Board might ask for it to be a public street if two lots were put there. Attorney Durbin agreed and said it would be all public street access, and that the new right-of-way area was out of respect to the neighbors. Mr. Nies asked Attorney Durbin if he was aware of any similar instances where there were changes made to slice up larger lots in the area that would be akin to what happened in the *Belanger* case. Attorney Durbin said he did not know if there had been a slicing up in that particular area, and it was further discussed. Mr. Nies said the zoning ordinance stated that when existing conditions don't match the ordinance, the ordinance is trying to promote compliance moving forward, not to expand nonconformities. He asked Attorney Durbin how he addressed elements of the zoning ordinance in this instance. Attorney Durbin said that was the purpose behind all zoning, particularly large areas in municipalities that remain undeveloped. He said in this case he believed the character of the neighborhood and the lots and how the subdivision was originally laid out supersedes strictly applying the 15,000 sf lot area requirement.

Mr. Rossi asked if the nonconformance of the large lot currently having a single nonconformance in the front setback to the paper street was the only nonconformance. Attorney Durbin said it was not a nonconformance but there was a slight right side setback nonconformance with the existing house. Mr. Rossi asked what the hardship was that militates having three lots instead of two. Attorney Durbin said the character of the surrounding neighborhood was the most significant hardship and the fact that there were likely two involuntarily merged lots. He said the hardship relates to the goals of the ordinance and whether there's a fair and substantial relationship. He said no other property in the area had 408 sf of street frontage and that the density goals were met from that perspective. Mr. Rossi asked what drove the placement of the lot lines that divide the three lots from each other. Eric Weinrieb of Altus Engineering was present and said they maintained the 75-ft

frontage for the two rear lots, which was consistent with the neighborhood and was what drove the lot configuration. He said it then backed into creating the 28-ft condition for the existing home. It was noted for the record that on the Staff Memo, the lot area per dwelling unit proposed for the parent lot should read 15,997 instead of 19,730, and that the frontage on Lot 2 was more than 75 feet because it was curved.

Chair Eldridge opened the public hearing.

#### **SPEAKING IN FAVOR OF THE PETITION [Timestamp 1:09:13]**

Peter Weeks of 18 Congress Street said he was familiar with the property and knew the person who owned it before the applicant did. He said the presentation that evening was probably a compromise that the Board should unanimously approve because Longmeadow Road has never been accepted as a city street. He said only the City Council could approve a city street, and it was never done.

#### **SPEAKING IN OPPOSITION TO THE PETITION**

Richard Palermo of 55 Meadow Road said he and his wife had lived there for 27 years and other neighbors had lived there much longer, and many of them agreed that the application was not in the best interest of the neighborhood. He submitted a petition signed by 31 residents of Farm Lane and Meadow Road who opposed the petition based on four reasons: the increase in noise, the impact to wildlife, negative precedents for more non-conforming properties, and the decrease in the values of surrounding properties. He described the four reasons in more detail.

Ryan Bursell of 71 Meadow Road said he agreed with Mr. Palermo and noted that the variance request was not a minor one but a major one that would be 33 percent larger. He said young families were already being priced out of Portsmouth and that building more expensive homes in the neighborhood would not help with that crisis.

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

Attorney Derek Durbin said the two people who spoke were not abutters and that what might happen farther up Longmeadow Lane was speculation. He said the photos submitted online as part of the public comment were photos looking into someone else's backyard. He said that even assuming they were looking into the applicant's back yard, nothing prevented the applicant from clearing the lot. He said there was no easement to preserve the wildlife corridor but the intent was not to clearcut the lots. He said his client could create a public street and pave it and that she could have more than one single-family home. He said the focus was on the zoning and that the intent behind the subdivision was not to create 15,000 sf lots and that many of the properties were well under 10,000 sf and did not have the required frontage. He said the density was different than what the ordinance called for and did not believe that there was any intent for the SRB zoning to stop anyone who had a large property from being able to subdivide into something that looks similar to

what it's surrounded by. He said the letters he handed out to the Board were from all the direct abutters who approved the project.

Eric Weinreib said that, in respect to the traffic impact, the construction of two new homes would generate about 10 vehicles per day per household, resulting in 20 vehicles a day on Farm Lane, and would not have a detrimental impact on the neighborhood.

Mr. Bursell said he meant the traffic in general and the fact that it was dangerous in that area.

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

## **DISCUSSION OF THE BOARD**

[Timestamp 1:25:25] Mr. Rossi said it was important for the Board to clarify what was in their jurisdiction to consider and what was not. He said much of what was said in the public comments were reasonable statements, like impacts on the wildlife and noise, but it wasn't part of the zoning ordinance. He said the Board's jurisdiction was to make judgments on things that are in the purpose of the zoning ordinance. He said those were not mitigating factors that the Board was permitted to consider. He said he was always skeptical of historical analyses that stated that lots were divided in a certain way at a certain point in time and it was not the zoning anymore. He said there had to be some sense of the passage of time and how things change. He asked how long the Board would go back to the 1950 drawings. He said that what was considered the right lot size 70 years ago was not persuasive to him in making decisions about what should be considered the right lot size today, given today's zoning. He said one of the purposes of the zoning ordinance was to move areas into a different state than maybe they had traditionally been built to, and he thought that applied here. Mr. Mattson said it was an oversized lot that seemed reasonable to subdivide. He said the ordinance states that for the SRB zone, one to three dwellings per acre is the goal, so he thought that two or three lots seemed reasonable. He said the proposed three lots would not only be closer to the surrounding lots but also closer to the required 15,000 sf and if it was divided into bigger ones, they would be farther away from the 15,000 sf. He said the actual buildable area of the lots within the setback were quite large and could easily fit any normal sized single family home, so he had no problem with the three lots. Mr. Rossi said the potential for avoiding litigation over the paper road and who has rights to what was outside the Board's jurisdiction was not something for them to consider in making their decision. Mr. Nies said he struggled with the size of the lots. He said the setback issues were easily addressed once one got past the division of the lot into three. He said there was very little difference between a 20,000 sf lot being over and a 10,500 sf lot being under and that they were both roughly a third of a difference from the desired 15,000 sf. He struggled with the idea that it was in the spirit of the ordinance, and he thought it seemed to be going in the opposite direction by turning it into three lots, with two of them being nonconforming. He said he also struggled with the hardship criteria, but the spirit of the ordinance was the one that gave him the most trouble. Vice-Chair Margeson said she supported the application because the purpose of the ordinance was to regulate density on the lots. She said the lot was almost an acre and did have a hardship. She said the two substandard lots would not be out of character with the rest of the

neighborhood and the buildings and would still fit within the building envelope. In terms of regulating density, she said it would do that. She said the two proposed lots would be almost completely abutted by Marine Terminal land. She said it was a hardship because it was the SRB district and it was 15,000 sf, and the property was almost an acre. She said it was unfair to apply the zoning ordinance to the applicant's piece of property given that the density was pretty much met in terms of the two other buildings on it. She said she did not think it would create overcrowding. Mr. Rheume said he agreed with Mr. Nies and said the setbacks on the property were minor concerns and that it really came down to subdividing into three lots or subdividing it into two lots. He said he did not think that the Belanger case obligated the Board to say that the current zoning was somehow inappropriate. He said he agreed with the argument that the neighborhood overall developed the way it was envisioned back in 1954 except for Longmeadow Road. Mr. Rossi said Lot 236-68 made that idea harder to swallow because it was an abutting property and was not nonconforming. Chair Eldridge said Portsmouth was old, so the zoning often conflicted. She said whether the Board saw the 1950s plan or not, they could see how the neighborhood developed. She said it made it easy to accept the variance requests because the property would look like part of the neighborhood very soon. She said whatever went on in the lot next door had nothing to do with the hearing. It was further discussed. Mr. Rossi said he was in favor of the proposal.

#### **DECISION OF THE BOARD** [Timestamp 1:38:25]

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

- 1. The approval shall be contingent upon the Planning Board approval of the subdivision and City Council acceptance of fee simple ownership of the new right-of-area as proposed; and*
- 2. The subdivision layout may change as a result of TAC and Planning Board reviews if it does not increase the zoning relief required.*

*Vice-Chair Margeson seconded.*

Mr. Mattson reviewed the criteria and said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said the goal was to have 1-3 dwellings per acre, and the proposal would result in three dwellings per acre and would be very similar to the density and character of the surrounding neighborhood. He said a few more houses would not threaten the public's health, safety and welfare. He said substantial justice would be done because the benefit to the applicant would not be outweighed by any harm to the public. He said the two new lots would be for two new single-family homes that would benefit the applicant due to the oversized lot. He said granting the variances would not diminish the values of surrounding properties because the two lots would be nicely shaped and have a large buildable area for appealing new construction homes that would fetch a premium. He said literal enforcement of the ordinance would result in unnecessary hardship. He said the special conditions of the property were its size, its location relative to the paper street, and the orientation of the lot depth relative to Farm Lane. He said the proposed use was a reasonable one by proposing two new single-family home lots in a single-family home neighborhood. Vice-Chair Margeson concurred and said the purpose of the



zoning provision was to regulate density, so that criterion was met. She said the hardship was that the lot is almost three times what is required for the SRB zoning district for both the lot area and the lot area per dwelling unit, and she thought it had special conditions that were different from the rest of the neighborhood.

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

- B.** The request of **Giri Portsmouth 505 Inc (Owners)** for property located at **505 US Route 1 Bypass** whereas relief is needed to develop additional parking and an Electric Vehicle Charging Station which requires the following: 1) Variance from Section 10.5B83.10 for off-street parking spaces to be located between the principal building and a street or within any required perimeter buffer area; 2) Variance from Section 10.1113.20 for off-street parking spaces located in a front yard, or between a principal building and a street (including on a corner lot). Said property is located on Assessor Map 234 Lot 5 and lies within the Gateway Corridor (G1) District. (LU-25-66)

## **SPEAKING TO THE PETITION**

[Timestamp 1:44:05] Rebecca Mauser-Hoye of Weston and Sampson Engineers was present on behalf of the owner. She reviewed the petition and said they were requesting eight EV charging spaces including one ADA space for four EV chargers that would be for hotel guests and the public. She said the location by the Portsmouth traffic circle would be a strategic one. She said a wetlands Conditional Use Permit would be submitted as well as an amended Site Plan Review application for the addition of five or more parking spaces. She said the parking spaces would be located between the hotel and Coakley Road and that there were currently other parking spaces. She discussed the buffer and pervious and impervious surfaces. She said the hotel was at a parking deficit, so they were proposing to add the eight EV spaces that would remove only one regular parking space and result in 64 spaces instead of 57. She reviewed the criteria.

[Timestamp 1:51:20] Mr. Rheume confirmed that each charger could handle two vehicles simultaneously. He said Ms. Mauser-Hoye's argument was that the chargers would be near the Portsmouth traffic circle and some highways and that cars would come in solely to charge their vehicles and not use the hotel, so the argument was that the hotel would use the parking as some overflow parking and not as part of their total numbers and would convert the space into a dedicated alternate accessory use. He said it would not be really parking for the hotel unless the guests had an EV car, but it was essentially an EV gas station that people would use and then leave. He asked how the additional spaces would benefit the hotel use vs. the accessory use being introduced. Ms. Mauser-Hoye said they were looking at it as an accessory use and as a benefit for the hotel users. Mr. Rheume said he was concerned about that aspect of the applicant's argument. He said the hardship was about what was different about the property compared to others in the area that said the ordinance did not need to strictly apply the front yard parking requirement to the property. Ms. Mauser-Hoye said there was already parking between the principal building and the street on both sides and it was close to the traffic circle, so it was easily accessible from the bypass. She said it

was a great location and would not change what was going on at the hotel already as far as parking. Vice-Chair Margeson asked why the applicant was requesting the variances and if there was a change of use being considered for the property going forward. Ms. Mauser-Hoye said the hotel owned multiple hotels in the area and wanted to add EV charging to them. She said it was a tight lot but a good location and would be a good benefit for the hotel users. Mr. Rheume asked if the applicant would go before the Planning Board for a Conditional Use Permit and site plan amendment. Ms. Mauser-Hoye agreed. Mr. Rheume said the EV spaces seemed to be dedicated to an accessory use and not the primary use. Ms. Harris said they could count toward the parking requirement and were not parsed out for the accessory use. Mr. Rheume said he did not think the ordinance stated that one parking space was needed for EV charger. Mr. Rossi said that one of the things the Board struggled with was how to meet the objectives of the Gateway zoning as far as promoting the development of walkable areas. He asked how someone would walk from the charging station to the restaurants across the street. Mr. Mattson said there was a signal crossing at Coakley Road and Cottage Street.

Chair Eldridge opened the public hearing.

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

John Chagnon of 200 Griffin Road said there was a need for EV chargers and that it would be in a great location and in the public interest. He said people with EVs visited his office and were faced with a choice of going either to the Seabrook Station charging area or going to Kennebunkport.

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

### **DECISION OF THE BOARD** [Timestamp 2:01:16]

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

- 1. The required Conditional Use Permits shall be obtained.*

*Mr. Rheume seconded.*

Mr. Rossi said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said the purpose of the Gateway zoning that was recently introduced to that area was to promote walkable spaces for pedestrian use, and he thought the application sort of forced that issue because people would walk to area businesses. He said he believed that it was consistent with the spirit of the ordinance. He said it would do substantial justice because the loss to the public would not be outweighed by any loss to the applicant if they were denied. He said he saw no loss to the public by granting the variance for that type of fairly low traffic volume use and thought it was reasonable and would not pose additional difficulties for the public. He said granting the variances would not diminish the values of surrounding properties, noting that the applicant pointed out that it was a commercial area and that type of a use was not inconsistent with what was

seen in the surrounding properties of car dealerships, hotels, and so on. He said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship, noting that the special condition was the fact that the parcel was located in an area where it was possible to walk to other amenities. He said the Board had been struggling to find proposals that promoted that, and he thought the location of the lot made it uniquely suitable for access to the hotel and food service areas. He said it was a special condition that is consistent with the request for the variances. Mr. Rheume concurred. He said it was a new section of the ordinance that was added due to concerns about the lack of available EV charging stations and was intended for the type of situation that the applicant presented.

*The motion passed unanimously, 6-0.*

- C. The request of **Troy Allan & Colleen Elizabeth Blanchard (Owners)** for property located at **205 Broad Street** whereas relief is needed to demolish an existing screened porch and construct an addition with a first floor deck which requires the following: 1) Variance from Section 10.521 to a) allow a front yard setback of 7.5 feet where 15 feet is required; b) allow a rear yard setback of 10 feet where 20 feet is required; c) allow building coverage of 46% where 25% is 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 130 Lot 16 and lies within the General Residence A (GRA) District. (LU-25-68)

## **SPEAKING TO THE PETITION**

[2:14:00] Attorney Tim Phoenix was present on behalf of the applicant, with project engineer John Chagnon and builder Jason Lajeunesse. Attorney Phoenix said he had a letter of approval from the rear abutter Christopher Wallace, which he read. He said they were the ones that would be most affected by the project. He said in 2021, the applicants got relief for an upward expansion and an enclosed porch that was within the existing footprint of the home. He said the lot was very small and had no parking. He reviewed the lot lines and dimensional standards and why the relief was needed. He reviewed the criteria and said they would be met.

[Timestamp 2:28:46] Mr. Rheume asked what the 15 sf deck on the plan referred to. Mr. Chagnon said there was some decking in the existing conditions that included a deck walkway and a second-story porch. Mr. Rheume asked if the 27 sf referred to the area over the basement office. Mr. Chagnon said it was not and explained that it could be the top of the stairs and the landing in front, which added up to 27 square feet. Mr. Rheume confirmed that the basement office was counted as part of the residence portion of the calculation. He said Attorney Phoenix stated that there was no current existing parking on the lot, but Mr. Rheume said there were no real sidewalks and there was a substantial setback from the property line from the street. He said there appeared to be a double curb cut, and the garage did not need a new curb cut. He asked if people had been parking in that area. Mr. Chagnon agreed and said the new garage would move the car out of the public right-of-way. Mr. Rheume said it looked like 205 Broad Street and 46 Spring Street were one lot at one

time and similar to the current Lot 17. He asked if that was subdivided at one time to create the tiny lot. Mr. Chagnon said it was probably true, noting that the development of the area went back to the late 1800s and lots were created that came off Broad Street and at some point, Spring Street was cut in or existing at the same time and that lot was further subdivided. Mr. Nies asked what the proposed lot coverage square footage was. Attorney Phoenix said it was 1,389 square feet. Vice-Chair Margeson asked if the walkway in the existing conditions plan was considered the deck in the previous plan. Mr. Chagnon said it looked larger than it was in the existing conditions, so he thought there was a section adjacent to the porch that was the deck. He said the deck walkway was part of the impervious surface coverage. Vice-Chair Margeson asked if it was part of the previous building lot coverage. Mr. Chagnon said he did not think so and that it spoke to the open space requirement. He said the minimum was only 30 percent, so the building coverage of 45 percent was not far from the 48 percent impervious but well below the open space allotment. Vice-Chair Margeson said she was curious about whether that walkway was included in the previous building coverage total of 35.5 percent. Attorney Phoenix said he looked at it as though the walkway is not a building and does not count as the building coverage.

Chair Eldridge opened the public hearing.

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

No one spoke.

#### **SPEAKING IN OPOSITION TO THE PETITION**

Mike Decristofaro of 208 Broad Street said he was opposed because the house lots in the neighborhood were all small and the houses were already very close. He said granting variances like the ones proposed would set a precedent for future homeowners who want to build beyond what the building code requires. He said he already had a wet basement and didn't think he could handle any more runoff. He said the Little Harbour School District was a quaint neighborhood and building expansions like the applicant proposed would change its character.

Melanie Sampson of 217 Broad Street said she directly abutted 205 Broad Street and shared a 50-ft fence. She said the applicant approached her and her husband to sign an approval for them to pursue a variance for their Phase 2 renovation and that she was shocked to learn that the first-floor porch would be replaced by an enclosed living space that was more than double the footprint. She said the proposed garage was immense, the deck's stairs would reach her property, and the French doors and oversized basement office with two AC condensers would face her property. She said the project would encroach on her family's privacy, block light, and adversely affect her property values.

Albert Sampson of 217 Broad Street said he and his wife had a direct view of all four levels of the southern façade and their property line was 21 feet away from the applicant's current structure. He said the applicant told them that they wanted a few feet of relief but the plan showed that the structure would be 9 feet longer and 19 inches wider than the existing porch and would be pushed

closer to the non-conforming eastern lot line. He said the project did not meet the criteria and that a basement office, a grilling deck, and a large garage were not hardships.

Boyd Morrison of 210 Broad Street said he lived across from the applicant and agreed with Mr. Decristofaro. He said the applicant was already approved for one variance relief project a few years ago, and now they had another round of hardship. He said the plan could be worked out better.

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

Attorney Phoenix said Mr. Decristofaro was concerned about runoff toward his property, but Mr. Chagnon confirmed that runoff did not go in that direction. He said the drip edges would catch and infiltrate rain water. He said it was a large percentage of coverage on a small lot but it still met the open space requirement. He said the hardship was not the deck, garage, or living space but was based on the size of the lot, which was very small. He said the construction was approved by the people most affected. He said the applicant thought it was a reasonable expansion, given the size of the lot, and that it met the requirements for a variance. He said they took the neighbors into consideration by proposing a one-car garage. As far as noise and light impacts, he said people could use their property the way they wanted to.

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

### **DECISION OF THE BOARD**

[Timestamp 2:54:19] Mr. Rossi said at a certain point in time, looking at a noncompliant lot size and saying that it was a hardship that justified high lot percent coverage kind of lost its logical connection. He said the property was purchased knowing that it was a nonconforming lot size, and he thought it was unreasonable to think that the structure itself can be expanded to accommodate all the desires of the property owner on such a small lot. He said he did not think a tautomeric argument was good as a justification for hardship on that property for a variance.

Mr. Rheume said he was comfortable with the setbacks. He said the one on the Spring Street side was an existing setback and there was a lot of distance from the edge of the property to the edge of the streetway, and there was no sidewalk so it looked like the property belonged to the applicant. He said the other setback 10 feet to the rear was more of an encroachment, but the applicant showed that the actual additional structure heading in that direction was minimal. He said it was nominally one story tall but the lot's topography gave it extra height, which was why the applicant was using it to create a garage space. He said it wasn't a lot worse than what was there now and it would not change the existing situation in terms of light and air. He said the enclosed porch was on land being used for a purpose and the imposition wasn't too bad. He said it came down to the request for overall lot coverage. He said the applicant was clever to show the Board the side elevation and the fact that there wasn't a lot of new construction there, but they failed to show the rear elevation where everything passes the line of the house. He said there was a lot of addition there and the topography worked against it so that it was almost acting as a two-story addition. He said the

applicant took advantage of that with the basement office but in some sense, that was almost like a first story. He said if the applicant had a larger lot, they could potentially do this by right, but the lot was very small, so he felt that it was a lot of structure being added to the overall situation. He said the proposed garage was deep at 28 feet, which sort of created the foundation, but he asked if the imposition on the overall percentage of lot coverage was sufficiently justified by the criteria. He said that was the part he was struggling with and thought it was asking for a bit too much on that very small lot. Mr. Mattson agreed and said the open lot coverage was actually still met even though the building coverage was not. He said a good portion of what was proposed was in the small lot toward the center of the parcel. He said it was a small lot and resulted in a very large percent building coverage, which could be interpreted as a hardship but also as a reason why it would not work. Vice-Chair Margeson said she would not support the variance requests for the reasons expressed. She said it created an overbulking of the very small lot. She said if it were a 7500 sf area, the applicant would have more to work with, so it was even more important that it not go over the building coverage. She agreed with Mr. Rheume that not much could be done with the setbacks, but combined with the building coverage, the lot would look almost curb to curb and it failed the spirit and intent of the ordinance.

[Timestamp 3:02:20]

*Mr. Rossi moved to **deny** the variance requests for the petition as presented and advertised. Vice-Chair Margeson seconded.*

Mr. Rossi said that in order to deny the variance requests, the request must fail at least one criterion but does not need to fail on more than one. He said he did not believe that it met the hardship test, and he disagreed with the logic that a nonconforming lot was the hardship that promoted further nonconformance. Vice-Chair Margeson concurred. She said a fair and substantial relationship exists between the general public purpose of the ordinance and its specific application in this instance. She said it is directly applicable to the lot, given how small it is, and that she did not find that the lot had hardship resulting in the need to go up to 46 percent building coverage. She said it really failed on the spirit and intent prongs of the variance request. She said it was clear that the lot coverages and side setbacks really do regulate the movement of light, air, and the appearance of overbulking on the lot. She said the application absolutely failed on those two criteria. Mr. Rheume said he would support the motion because he thought that some level of relief was possible for the property, recognizing that it was already over the allowed percentage and there was some ability to get above what was required by the zoning ordinance. He said he thought it was just asking a bit much and that the applicant could accomplish most of their objectives with a smaller garage and a more modest first floor addition to be more in keeping with the spirit of the ordinance but still be something that could warrant some relief and not be subject to *Fisher v. Dover*.

*The motion **passed** by a vote of 4-2, with Mr. Mattson and Chair Eldridge voting in opposition.*

- D.** The request of **Wendy M Freedman (Owner)** for property located at **911 South Street #3** whereas relief is needed to demolish an existing deck and construct a 100 sf addition which

requires the following: 1) Variance from Section 10.521 to allow a side yard setback of 5 feet 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 132 Lot 19 C and lies within the General Residence A (GRA) District. (LU-25-59)

### **SPEAKING TO THE PETITION**

[Timestamp 3:06:33] The owner Wendy Freedman was present to review the petition. She said she wanted to make the existing deck into a room that would serve her and her daughter in her tiny home that only had 760 sf of living space. She reviewed the criteria and noted that the only setback affected measured 150ft and would be 140 ft after the proposed addition.

[Timestamp 3:09:28] Mr. Rheume said the deck would be replaced by the new addition but the addition would go a bit farther. He asked if the second window closest to the neighboring property would be encompassed by the new addition. Ms. Freedman agreed and said it would shift over to the deck where there was currently five feet of space between the corner of the building and the beginning of the deck. She said there would then be two feet between the new addition and the edge of the building because she could not move the front door, so everything had to shift over. Mr. Rheume said French doors would be added to the new addition, and he asked what would be done to the deck. Ms. Freedman said the deck would be recreated as a way to enter the house. Mr. Rheume verified that the steps that were currently a few rocks would be made into a more compliant situation. He said when the original barn was converted into a living space previously, the Board stipulated that the northerly and westerly facades would not have any windows, which appeared to have occurred, but Ms. Freedman was proposing to add a window on the westerly façade of the addition. He asked why Ms. Freedman wanted to add that window and why she felt it was in keeping with the spirit of what was approved a few years before. Ms. Freedman said she hadn't known that no windows were allowed on that side. She said a transom window would bring in more light due to the eastern side of the house being dark because it was mostly a stairway. Mr. Rheume ensured that the submitted document was the condo association's agreement to make the change to Ms. Freedman's unit.

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 3:14:37] Mr. Rossi said he thought the transom window would be fine and would achieve the purpose of the original intent to respect the privacy of the neighbors.

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

Mr. Rossi said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said there would be no public interest in preventing the small addition from occurring. He said substantial justice would be done because there would be no loss to the public by granting the variances, whereas there would be a loss to the owner in terms of her ability to enjoy some extra space within her living unit. He said granting the variances would not diminish the values of surrounding properties, noting that the other residents of the condo association signed a document of approval, which indicated that they felt there was no negative impact to the value of their units. He said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. He said the purpose of the provisions in the ordinance, particularly the left yard setback, is to preserve light and space for the surrounding properties. He said the proposed structure was a very minor one and would not significantly infringe upon the light and space environment of the area. Mr. Mattson concurred and said that the hardship was the dwelling's location that was already fixed and the need for relief for the addition to the left side yard.

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

### **III. ADJOURNMENT**

The meeting adjourned at 10:18 p.m.

Submitted,

Joann Breault  
BOA Meeting Minutes Taker