

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

**7:00 P.M.**

**January 27, 2026**

**MEMBERS PRESENT:** Beth Margeson, Chair; Jeffrey Mattson, Vice Chair; Members David Rheume, Paul Mannle, Thomas Nies, Thomas Rossi, Robert Sullivan; Mike Lucas, Alternate

**MEMBERS EXCUSED:** None.

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

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Chair Margeson called the meeting to order at 7:00 p.m. She stated that New Business Petition C, 238 Austin Street, was postponed to the February meeting.

Chair Margeson asked for a motion to suspend the rules to take New Business Petition E, Langdon Street and 98 Cornwall Street, out of order. Mr. Rheume abstained from the vote.

Chair Margeson read it into the record. *It was voted to postpone the petition to the March meeting, 7-0, with Mr. Rheume abstained. (Note: there was no motion or second).*

## **I. OLD BUSINESS**

Mr. Sullivan stated that he was not present at the meetings for the following requests for rehearing but that he reviewed the videos and records of the proceedings and felt that he was qualified to vote on them.

### **A. 58 Humphrey's Court – Request for rehearing (Admin Appeal Abutters)**

Chair Margeson read the request for rehearing into the record. [Video timestamp 6:08] The request of **Robert M Snover Revocable Trust (Owners of 58 Humphrey's Ct)** to appeal the decision by the BOA to grant the request of **Abutting appellants (Owners of 54, 44, 43, 53, 63, and 75 Humphrey's Ct)** for appeal of the administrative decision of a zoning determination pertaining to the side and rear lot lines of the property for a proposed subdivision located at 58 Humphrey's Court. Said property is located on Assessor Map 101 Lot 47 and lies within the General Residence B (GRB) and Historic Districts. (LU-25-165)

Mr. Sullivan discussed what the Statute required and said the main issue was to allow the Board to correct any perceived errors it sees in its proceedings before a court will correct them. Mr. Rheume said he believed his motion ended up being the successful one. He said the Board had a lot of discussion and that the part that the appellant was restating was the thing that the Board felt most at

peace with their decision. He said the Board was not able to close the loop on the side yards, but it was quite thorough and they had a good conviction in the decision that the 10-ft line that the Planning Department and Staff had established was the rear property line was in fact incorrect. He said all the appellant did was reinstate his original argument and what the Board was considering and did not really say how there was an error, other than something about the Notice of Decision not being written correctly. He said he did not see where there was an error that the Board made on that aspect. Mr. Nies said he was confused about the Notice of Decision and thought it could be clearer. Vice-Chair Mattson said he would not be in favor of a rehearing based on how the Board behaved during the meeting but understood if that was the best way to address the ambiguity of the Notice of Decision. Mr. Rossi said the Board deliberated all the issues brought forward and made a decision. He said the appellant was questioning whether it was the right decision and not questioning the way the Board made the decision, so he did not see any grounds for the appeal and would not be in favor of granting a rehearing. Chair Margeson said it was clear that the Planning Department's interpretation was not upheld by the Board. It was further discussed. Mr. Rossi said the Board was talking about a hypothetical lot that did not exist, and he would be loath to spend the Board's time on a rehearing for that. Chair Margeson said she would be against a rehearing. Mr. Sullivan said he would also be against holding a rehearing but said there was another option in that a Board member could make a motion to grant or deny a rehearing but also move to clarify a motion or decision. It was further discussed. Mr. Rheume said what was written did not sound like the motion he made. Vice-Chair Mattson said he would prefer to have a clarification of the Notice of Decision instead of a rehearing because the Notice would not require a rehearing and was consistent with how the Board meant it. It was further discussed.

#### **DECISION OF THE BOARD** [Timestamp 24:28]

*Mr. Mannle moved to direct the Planning Staff to clarify or rewrite the Notice of Decision for Humfrey's Court. Mr. Nies seconded the motion.*

Vice-Chair Mattson said he was in favor of the motion but thought it might be useful to have it specific to the fact that the Board was granting the appellant's appeal but that it did not mean that they agreed with it. It was further discussed. Mr. Rheume said the situation was so muddled that the cleanest way would be to grant a rehearing to see if the Board could be able to work through the side line issues on the fictitious case and give the Planning Department staff some direction for that in the future and ensure that the Notice of Decision sent out is crystal clear. Mr. Nies said Mr. Rheume's motion was very clear and that the Board did not take a stance on how the lot should be measured. He said if the Notice of Decision was edited to reflect the motion that was on record, he would be satisfied.

[Timestamp 33:33] Ms. Casella clarified that the Board was talking about a rehearing request from the abutters of 58 Humphrey's Court that determines what a side and rear lot line is, i.e. an appeal, so what was written in the Action Sheet and should be the same as the minutes and Letter of Decision read: 'The Board voted to grant the appellant's appeal of the zoning determination by the Planning Director Peter Britz regarding the classification of the rear lot lines for the proposed subdivision at 58 Humphrey's Court. Further, the BOA makes no determination on the classification of side lot lines for the proposed subdivision.'" Mr. Rossi said that was a clear communication of what the Board did.

*Mr. Mannle withdrew his motion, and Mr. Nies concurred.*

The **amended** motion was:

*Mr. Sullivan moved to deny the request for rehearing, seconded by Mr. Mannle.*

Mr. Sullivan said that, based on the previous discussion, the record was sufficiently clear. Mr. Mannle concurred and had nothing to add.

*The motion passed unanimously, 7-0.*

#### **B. 58 Humphrey's Court – Request for rehearing (Admin Appeal Owners)**

Chair Margeson read the request for rehearing into the record. [Timestamp 37:27] The request of **Abutting appellants (Owners of 54, 44, 43, 53, 63, and 75 Humphrey's Ct)** to appeal the decision by the BOA to uphold the request of **Robert M Snover Revocable Trust (Owners)**, for property located at 58 Humphrey's Court for appeal of the administrative decision to require a variance for Section 10.1530 pertaining to the lot area of the property located at 58 Humphrey's Court. Said property is located on Assessor Map 101 Lot 47 and lies within the General Residence B (GRB) and Historic Districts. (LU-26-2)

#### **DECISION OF THE BOARD**

*Mr. Rossi moved to deny the request for rehearing, seconded by Vice-Chair Mattson.*

Mr. Rossi said he found that no new matters or facts were raised in the appeal that would have a bearing on the Board's decision or his view of the Board's decision, therefore he did not see a justification for a rehearing. Vice-Chair Mattson concurred. He said he did not vote in favor of the motion being appealed but did not believe that the Board made an error in the outcome. Mr. Nies, Mr. Rheume, and Mr. Sullivan agreed. (Reference timestamp 39:28 for the lengthy discussion).

*The motion passed unanimously, 7-0.*

#### **C. 58 Humphrey's Court – Request for rehearing (Variances)**

[Timestamp 44:10] Chair Margeson read the request into the record. The request of **Robert M Snover Revocable Trust (Owners of 58 Humphrey's Ct)** to appeal the decision by the BOA to deny the request of Robert M Snover Revocable Trust (Owners), for property located at **58 Humphrey's Court** whereas relief is needed to subdivide the existing parcel into two parcels which requires the following: 1) Variance from Section 10.521 to allow a) 51.8 feet of continuous street frontage where 80 feet is required, b) 4,840 square feet of lot area where 5,000 square feet are required; and c) 4,840 square feet of lot area per dwelling unit where 5,000 square feet are required. Said property is located on Assessor Map 101 Lot 47 and lies within the General Residence B (GRB) and Historic Districts. (LU-25-168)

Chair Margeson said the only variance that the Board voted on was Variance No. 1, the variance from Section 10.521 to allow 51.8 feet of continuous street frontage where 80 feet is required. She said zoning requests B and C were determined to be moved. Mr. Rossi said the appellant made the

argument that the Board did not constrain themselves to defining the neighborhood as being those properties that are within the same zoning district as the property in question. He said he found it interesting that land use attorneys came before the Board and, depending on the needs of their clients, said the Board should only compare the request to things in the same zone, or at other times made the argument that even though they were in one zone, the properties that are in a different zone constitute the neighborhood. He said that even within the zone, the property was not unique. He said there were two other corner lots that were quite large and had similar arguments to make, so he did not think that there was any new consideration in the appeal.

## **DECISION OF THE BOARD**

*Mr. Rossi moved to **deny** the request for rehearing, seconded by Mr. Mannle.*

Mr. Rossi said the grounds for the appeal was based on what the property was for the Board to consider as part of the neighborhood and whether one can look across the zoning districts in this area that one might consider to be the neighborhood. He said it was the rightful discretion of the Board to do that, and many times land use attorneys relied on the Board to do that in transitional areas. He said therefore he did not think that it was a legal error on the part of the Board to do that. He said looking strictly within the zone, there are similar properties, therefore the basis of the ruling that the Board originally made about hardship and the non-uniqueness of the property would stand even within that zone. He said he found no basis to grant the appeal for the rehearing. Mr. Mannle concurred and had nothing to add.

*The motion **passed** 6-1, with Chair Margeson voting in opposition.*

## **II. NEW BUSINESS [Timestamp 50:30]**

- A.** The request of **Rigz Enterprises LLC (Owner)**, for property located at **822 US Route 1 Bypass** whereas relief is needed to place a new sign on an existing pole which requires the following: 1) Variance from Section 10.1253.10 to allow a sign setback of 2.5 feet from a lot line where 20 feet are required. Said property is located on Assessor Map 160 Lot 29 and lies within the Business and General Residence A (GRA) Districts. (LU-25-179)

## **SPEAKING TO THE PETITION**

Rigz General Manager Dennis Stoddard of 11 Steam Mill, York, ME, was present on behalf of the owner. He said they wanted to build a new tobacco and beverage place on the current lot. He said the location of the existing sign pole had been the same for several years and was not an issue in the past. He said the sign was almost 23 feet from the roadside. He reviewed the criteria.

[Timestamp 55:28] Mr. Rheume asked if the intent was to restore the two additional signs that were shown in the plan and looked like they had been removed. Mr. Stoddard said there was no intent to do so. Mr. Rheume said the sign appeared to be facing in the westerly direction but it would be on both sides and identical on both sides. Mr. Stoddard agreed. Mr. Rheume asked if it would be an LED display sign and not a changeable one. Mr. Stoddard agreed and said the sign would change once a day and would have no motion or animation. Mr. Sullivan verified that, other

than its location on the existing pole, the sign would comply in every other respect with the requirements of the zoning.

Chair Margeson opened the public hearing. [Timestamp 58:05]

**SPEAKING IN FAVOR OF THE PETITION OR AGAINST THE PETITION**

No one spoke.

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

Tony Coviello of 341 Dennett Street said he was not a direct abutter but that the property looked out at the rear of his property and others. He said the property and others had come before boards before and were allowed to have the buildings pushed back, which he thought was disappointing. He said lights were colored now instead of white. He said the sign on the property as shown on Zoom appeared to be smaller than the one proposed now, and dimly lit. He said the proposed light seemed to be glaring and gaudy and the pole much taller. He said he wished the sign were more in character with the intent of the zoning ordinance and that any illumination on the sign would follow the business hours. He hoped the 1994 hours of operation stayed with the property.

Dave Grazbowski said he did the site work on the property. He said the pole was the existing one and was the same height and on the same concrete base and that the only change was that they installed new conduit for power to get to the pole.

Mr. Nies said the zoning ordinance had standards for lights, including when they can be on and the intensity of illumination, and he asked if the sign would comply with that. Mr. Grabowski agreed. He said the lights of the building were lowered downward and that the lights on the existing pole would be changed to a flat LED.

Dennis Stoddard said the sign's brightness would be less than the 1,500 nits, which was mandated by the ordinance. He said they would ensure that it met the brightness requirement. He said sign's light would shut off when the store closed.

Tony Coviello said he found an image from Google Maps that showed the sign that was there and that the top portion was the only part illuminated. He said the new sign was not dimmed and that it would be seen from the back of his house. He said he was only asking that the new sign be more in line with what was there before.

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

**DISCUSSION OF THE BOARD** [Timestamp 1:06:41]

Mr. Rossi said he was sympathetic to the property owners on Dennett Street, but the variance request was not related to the illumination of the sign. He said no variance was being requested for what the property owner was allowed by right, and the variance only pertained to the setback of the sign pole from the street, so that was what the Board needed to confine their deliberations to. Mr. Rheume said the abutter was correct in that the sign that was previously on the light pole was to one side of it toward the bypass, so it was probably even more egregious than what the applicant was asking for today. He said there were other signs in the past that were even larger but they were all eliminated. He said the ordinance called for a maximum illumination and an internal illumination sign of a maximum of 5,000 nits. He said he agreed that the new LED signs could have different images on them and seemed to project more light, but that was not the issue before the Board.

Mr. Sullivan said the abutter Tony Coviello was a good friend of his, so he asked to recuse himself from the petition. Chair Margeson said she would grant it. Alternate Mr. Lucas took a voting seat.

### **DECISION OF THE BOARD** [Timestamp 1:12:21]

*Vice-Chair Mattson moved to **grant** the variance for the application as presented and advertised, seconded by Mr. Mannle.*

Vice-Chair Mattson said he appreciated the concerns of the abutter, but the variance was only about how far back from the lot line the sign was being proposed and not its size. He said allowing it to be closer to the lot line would push it further away from the residential property, so that would be a benefit to the abutter. He said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said the sign pole was already in that location and there was previously a sign there for several years. He said the purpose of the ordinance was to not have signs so imposing on the street that they interfered with traffic safety. He said the sign would not alter the essential characteristics of the neighborhood that had multiple gas stations and signs and would not threaten the public's health, safety, or welfare. He said substantial justice would be done because the benefit to the applicant would not be outweighed by any potential harm to the public. He said he did acknowledge that there could be some concerns from the public by the illumination of the signs at night, but the variance was not regarding that and was only related to the sign's location relative to the property line. He said forcing the applicant to put the sign somewhere else could harm the general public even more. He said granting the variance would not diminish the values of surrounding properties. He said allowing the variance would be less impactful to the residential neighborhood on Dennett Street. He said literal enforcement of the ordinance would result in unnecessary hardship. He said the special conditions of the property that distinguished it from others in the area was that the sign pole was already in that location. He said the property's frontage was a one-way lane of travel and someone had to go under a bridge as they approached the property, so allowing the sign to be closer to the street would allow it to be read from vehicles sooner. He said it was a special condition of the property, in combination with the existing sign pole being there, and that the proposed use was a reasonable one and consistent with that type of business. Mr. Mannle concurred and had nothing to add.

*The motion passed unanimously, 7-0, with Mr. Sullivan recused and Alternate Mr. Lucas voting.*

- B.** The request of **Three Hundred Seventy One Lowell Avenue Realty LLC and TMK Lavergne LLC (Owners)** and **Convenient MD (Applicant)**, for property located at **1303 Woodbury Avenue** whereas relief is needed for a change of use from retail to medical office and striping on existing pavement for additional parking which requires the following: 1) Variance from Section 10.5B83.10 to locate parking between the principal building and the street; 2) Variance from Section 10.1113.20 to locate parking between the principal building and the street; and 3) Variance from Section 10.1113.31 to permit parking within 100 feet of a residential zone. Said property is located on Assessor Map 217 Lot 1 and lies within the Gateway Corridor (G1) District. (LU-25-174)

**SPEAKING TO THE PETITION** [Timestamp 1:18:26]

Attorney Chris Mulligan was present on behalf of the owner Convenient MD, along with the Convenient MD's Director of Real Estate David Sanderson. He said the proposal was to relocate Convenient MD's primary care medical office facility from Woodbury Ave to the existing Rite Aid facility on the site. He said to do that, parking relief was needed because the site did not have sufficient parking for Convenient MD's expected parking load. He said there was about 3,400 sf of additional vacant space and that they did not know what tenant would take that space. He said the current site had 39 spaces and that they proposed to add 10 more spaces, for a total of 49 spaces. He further explained the parking needed. He discussed the context of the area. He said the three single-family homes across from the site would be the most impacted by the proposal because the applicant wanted to put the additional parking in what was now a permitted loading zone, but it was between the building and Granite Street and within 100 feet of a residential zone. He noted that there would be a landscape buffer to shield the parking. He said there would be parking for customers and that the additional 10 spaces would be for employee parking. He said clients using the site would be there only by appointment. He reviewed the criteria.

[Timestamp 1:32] Mr. Rheume said he did not see a delineation in the package of the spots within the 100-ft setback. He asked Attorney Mulligan to point it out and also asked how many spots were in the buffer zone currently. Attorney Mulligan said there were about six spaces in the buffer. Mr. Rheume said he saw three street fronts instead of two. He said the parking space request was based on the 250 square feet of floor area, which was true for medical reasons, but he said other potential uses could go in that space that could require more parking. He asked if the applicant decided to put a limit on what kinds of businesses could go in there. Attorney Mulligan said it was a good question for the owner. He said the ultimate parking load on the site would be dependent on what the use finally was, and if they had too much or not enough parking to accommodate that use, they would need a conditional use permit from the Planning Board. He said the applicant's need would swallow up 90 percent of the parking on the lot as it was now, so they had to increase. Mr. Rheume asked if the applicant felt that a stipulation was necessary to restrict the hours associated with the use of the parking spaces in the 100-ft setback and if 7:30 to 5:00 on Mondays and Fridays was a good range. Mr. Sanderson said their primary care hours were 7:30 to 5:00 and that employees would be a little early in the morning and late in the evening. Mr. Nies asked how far from the zone it was. Attorney

Mulligan said it roughly 60 feet to the far side of the street. Mr. Nies said the zoning ordinance stated that when a zoning boundary follows the street, it is assumed to be the center of the street. Vice-Chair Mattson asked if the loading zone would be eliminated, and Attorney Mulligan agreed. Chair Margeson asked what the plans were for the drive-thru at the former Ride Aid. Attorney Mulligan said it would be determined but it was possible that the tenant who took over that portion of land would have a use for the drive-thru. Chair Margeson verified that by putting the parking in the area that was devoted to the drive-thru, the drive-thru would be utilized, so there would now be parking that would actually exit into the drive-thru lane. Ms. Casella said Section 10.422.10 of the ordinance stated that where a boundary is shown as following a street, road, or utility, the boundary shall be the center line unless otherwise indicated.

Chair Margeson opened the public hearing.

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

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

### **DISCUSSION OF THE BOARD [Timestamp 1:45:02 ]**

Mr. Rheume said the property had issues with the fact that it was bounded by streets on all sides. He said previously the Board granted relief for parking spaces to within the 100-ft setback and the Board had a rough idea where that was. He said the applicant had been honest in saying that all ten new spots proposed were clearly within that 100-ft setback from the neighboring property and were all between the primary building and Granite Street. He said one of his concerns was the future tenant and the fact that almost one-third of the total square of the area could be for some other use. He said the applicant was not in control of the fact that the drive-thru still exists, which could change a lot of factors, and the Planning Board would look at how that would affect circulation and traffic. He said most of the uses were not more intensive, and it was just an unknown that the Board would be approving something that might have to come back for more parking and the Board did not know where that parking would be. Mr. Nies said it was an unusual property because of its location and being fronted on three sides by streets, so any parking would be between the building and a street. He said he was more comfortable with the location because it was between 50-60 feet from the zoning boundary, but it was probably closer to 75-80 feet until one got to a residential lot. He said he understood the concern about the unoccupied property, but the parking requirements were not before the Board at this time. He said he was comfortable with the request as presented. Mr. Rheume noted that the hours of operation that were previously granted were for a pharmacy use and that he was concerned that the use would be 24 hours a day and there would be parking close to a residential neighborhood off-hours, but the applicant said that would not be the case. He said it should probably be stipulated.

### **DECISION OF THE BOARD [Timestamp 1:50:25]**

*Mr. Nies moved to **grant** the variance for the application as presented and advertised, with the following **condition**:*

- 1. The hours of use for the striped 10 parking spots added by this variance shall be limited from 6 am to 7 pm.*

*Vice-Chair Mattson seconded.*

Mr. Nies said it was a well-screened area of the property and the trees along Granite Street would make the building almost invisible to see from across the street. He said the project would have no impact on the residential areas. He said granting the variances would not be contrary to the public interest because although the site was within the 100-ft buffer, it was clearly 70-80 feet from any of the residential properties. He said the neighborhood's health, safety or welfare would not be affected, nor light and air, and it would not alter the essential characteristics of the neighborhood. He said it was an unusual lot due to its location and was isolated from other commercial properties by the highway. He said granting the variances would observe the spirit of the ordinance. He said it provided a buffer between the parking and the residential lots and was close to 80 feet to the residential properties. He said substantial justice would be done because there would be no benefit to the public that would outweigh the loss to the applicant by denying the variances. He said it would either require additional impervious surfaces, which would be a harm to the public in order to accommodate the increased parking needs, or it would bar the use of the building for this type of facility, which would be a loss to the owner or applicant. He said there was no evidence that granting the variances would diminish the values of surrounding properties. He said it had been a commercial use for a long time. He said the property had special conditions, including that it was an existing commercial property in a Gateway Overlay District, which was not unusual, but it had roads on three sides and was isolated from the rest of the District by a major highway, and it also abutted a residential district. He said it was an existing structure that had a loading zone, which provided a logical way to increase parking. He said the roads on three sides limited where parking could be placed, so that justified having it between a road and a building. He said owing to these special conditions, there was no fair and substantial relationship between the purpose of the ordinance and its specific application to the property. Vice-Chair Mattson concurred. He said a big component was the privacy evergreen screening that would separate the parking from the residential area. He said it also had existing asphalt where vehicles would either park or be driven to and from, so parking would be less noisy. He said having more parking would not hurt the situation with the uncertainty of the future potential adjacent tenant.

Mr. Rheume said he would support the motion. He said his reservations about the uncertainty associated with the unused portion of the building would be an issue for the property owner, and the drive-thru would be something that would go before the Planning Board. He said he appreciated the condition included in the motion because it was a fair one that would ensure that the new parking close to the residential neighborhood was used during reasonable times.

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

**C. POSTPONED TO FEBRUARY** The request of **Lisa Paige Reyes (Owner)** and **Chris Ward (Applicant)**, for property located at **238 Austin Street** whereas relief is needed to demolish the existing structures, subdivide the lot and construct a new home on each lot which requires the following for the proposed Austin Street Lot: 1) Variance from Section 10.521 to allow a) 49.75 feet of frontage where 70 feet is required; and b) an 8.5 foot right side yard where 10 feet is required. The following is required for the proposed Coffins Court Lot: 1) Variance from Section 10.521 to allow a) 2,884 sq.ft. of lot area where 3,500 sq.ft. is required, b) 2,884 sq.ft. of lot area per dwelling unit where 3,500 sq.ft. is required, c) a 5.5 ft. side yard where 10 feet is required; and d) an 18 foot rear yard where 20 feet is required. Said property is located on Assessor Map 135 Lot 61 and lies within the General Residence C (GRC) District. **POSTPONED TO FEBRUARY (LU-25-177)**

*The petition was postponed to the February 17 meeting.*

**D.** The request of **Bretta Heilbut (Owner)**, for property located at **21 Elwyn Avenue** whereas relief is needed to demolish the existing one-story detached garage and construct a new two-story garage which requires the following: 1) Variance from Section 10.521 to allow a) a 6 foot left side yard where 10 feet is required, b) a 5 foot rear yard where 19 feet is required; and c) 34.5% Building Coverage where 25% is allowed. Said property is located on Assessor Map 113 Lot 28 and lies within the General Residence A (GRA) District. (LU-25-176)

#### **SPEAKING TO THE PETITION [Timestamp 2:08:06 ]**

Attorney Derek Durbin was present on behalf of the owner, along with the owner Bretta Heilbut and the project designer Matt Beebe. Attorney Durbin said they proposed to demolish the detached garage and replace it with a two-story garage. He said the existing garage was more like a shed and too small to fit a modern vehicle. He said the new garage would be in the same location but two feet wider and taller, and the footprint would be 96 sf larger but there would be an additional footprint due to the external stairs they proposed. Mr. Nies asked what the dimensions of the existing garage were. Attorney Durbin said it was 12x20 feet. Attorney Durbin then reviewed the criteria.

[Timestamp 2:18:18] Mr. Sullivan addressed the hardship criteria and asked whether the property was not being reasonably used today. Attorney Durbin said it was not being reasonably used in conformance with the ordinance. He said they wanted to replace and increase the nonconforming structure but nothing could be done without requesting relief. He said the structure would need to be demolished in any case. Mr. Rheume said the applicant's argument was that the existing garage was inadequate for a modern vehicle. He said he Googled a standard one-car garage and that it was shown as 12x20'. He asked what was so restrictive about the current size of the garage that it would not be able to be worked in its current footprint. The designer Matt Beebe said the biggest restriction of the existing garage besides its state of disrepair was that it was built on the dirt and the slab was pouring between the walls, so the structure was slowly rotting into the ground. He said its interior height was such that anything other than a small vehicle would not work and that it was

more like a shed. He said typically when garages are designed, the focus is on 12 feet of width for a vehicle, but allowances had to be made for the width of the door and room to open doors, get cars in and out, and have some room for other items like lawn tools or sleds. He said he had never designed a garage that was only 20 feet deep. Mr. Rheume asked why the applicant could not start with the opposite corner closer to the side lines and move the new footprint into the other direction, which would be more encroaching upon the allowed building area instead of the setbacks. Mr. Beebe said the distance between the garage and the house was now less than four feet, so if that was brought forward, the kitchen windows would be encroached upon. Mr. Rheume asked why the stairs were not placed on the interior side of the structure. Mr. Beebe said they considered putting the stairs on the patio side, but the roof design would need a dormer to get the stairs up there, and he thought that might make the building seem heavier and taller.

Chair Margeson opened the public hearing.

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

No one spoke.

### **SPEAKING IN OPPOSITION TO THE PETITION [Timestamp 2:26:40]**

Bill Aralkelian of 18 Kent Street said he was a rear abutter and would be negatively affected by the proposed structure. He said the two-car garage would increase the degree of nonconformity by further reducing the rear setback to five feet and the side yard setback to six feet. He said a true hardship was not demonstrated, noting that the structure's form, size, height and placement was a design preference and not a zoning hardship and would not be in character with the established pattern of the immediate neighborhood that had mostly single-story garages. He said his property would have increased dominance, loss of light and sky exposure, and reduced privacy due to the height and proximity of the structure and location of stairs. He asked the Board to deny the request.

Cliff Hodgdon of 10 Kent Street said he was the back corner abutter. He suggested that the applicant design the garage to be only 22 feet long and move the stairs to the side of the yard on the inside so that they were not close to anyone's property line.

Bill Aralkelian of 18 Kent Street read a letter from David and Sandy Mikolaities of 19 Kent Street that outlined the reasons why they were opposed to the petition and noted that all five criteria were not met. They wrote that the applicant could have made a better attempt to meet the spirit and intent of the ordinance and that there was no hardship. It also was noted that the applicant received three variances for the primary residences in 2020 and that the applicant knew what they were allowed to do on the lot when they bought the property. Mr. Aralkelian submitted the letter to the Board.

### **SPEAKING TO, FOR, OR AGAINST THE PETITION [Timestamp 2:39:55]**

Attorney Durbin said the project had reached out to both objecting abutters, only to get comments at the last minutes as well as a submission that showed a superimposed structure that was out of scale

with what was proposed. He showed the Board a photo and depiction of what the proposed structure would really look like. He noted that there was a significant grade change that minimized the proposed structure's increase in height. He said a significant part of the increase in building coverage was associated with the external stairs, which was not the same as an enclosed structure. He said the actual increase in footprint would be 96 square feet, which was a minor difference over what exists. He said the 5-ft grade change on the lot distinguished the property from others. He said there were other two-story garages in the area. He said the applicant was willing to move the stairs to the right side of the garage and shrink the garage length by a foot or two.

Bill Aralkelian of 18 Kent Street said the scale from the picture he submitted was unknown but he guessed it was a 19-ft structure and a 6-ft fence. He said he did reach out to the designer beforehand but was told that it was probably too late to change anything for the meeting.

Barbara Jenny (via Zoom) of 94 Pleasant Street said she was in favor of the petition. She said she used to live in the neighborhood, where she built a two-car garage and art studio up against the property lines. She said the Arts and Cultural Committee's report was incorporated into the master plan. She said arts added vitality to the City, increased property values in the neighborhood, and allowed affordable live/work housing for artists. Chair Margeson asked what Ms. Jenny's association with the project was. Ms. Jenny said the designer was her husband but that she was speaking to the fact of supporting arts in the City.

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

### **DISCUSSION OF THE BOARD** [Timestamp 2:48:35]

Vice-Chair Mattson said the proposed garage could be pushed farther away to avoid the side line setback and that it could perhaps even attach to the primary dwelling. He said typically in a garage with a floor above, the floor was within the roofline and not a full second story, which the proposal had but it was a taller structure than existing. He said the applicant had the grade factor in the rear, which would work in their favor. He noted that the rear and left lot abutters also had garages close to the property line. He said a lot of what drove the request for relief was the undersized lot but was not sure that it constituted a hardship, considering that the other lots were also undersized. Mr. Rheaume said his concern was that the applicant was asking for more and more relief in every possible dimension. He said people would be going up and down the stairs and staring into people's properties. He said the current garage was a little short but still usable, yet the applicant was adding another story to the proposed garage, seemingly for the purpose of an art studio but could be used for something different in the future. He said the Board's granting was in perpetuity. He said the proposed garage was a much taller structure, and in spite of the grade change, would be much more visible and much closer to the back property line. He said the applicant made a good argument that the increase in lot coverage was not substantial, but Mr. Rheaume said his concern was the encroachment on the setbacks. He said he would rather not stipulate things like the applicant offered to do. He said the applicant could come back with a new design if it did not involve Fisher v. Dover. Mr. Sullivan said if the Board voted that night, it would have significant and lasting effects on the

applicant. He said the Board could ask the applicant if he would agree to continue the matter to allow him to modify his application for the reasons stated by Mr. Rheaume. Mr. Rossi said the Board was asked to make a judgment on this variance for this particular design. He said if the Board made a negative judgment, the applicant could return with a new design. He said it was not up to the Board to anticipate what the design might or should be, and if the design was significantly different, it would clear the Fisher v. Dover hurdle and the new application could be considered with no prejudice. It was further discussed. Mr. Mannle said he preferred to deny the variance so that the applicant could return with a different application in which the stairs and garage were changed so that Fisher v. Dover would not apply. The Board discussed tabling or continuing the application. Mr. Rheaume said he wanted to see something better out of the applicant. Chair Margeson agreed and said the Board should either grant or deny the variance.

#### **DECISION OF THE BOARD** [Timestamp 3:03:09]

*Mr. Rheaume moved to **deny** the requested variances, seconded by Mr. Sullivan.*

Mr. Rheaume said the petition failed the hardship criteria and what was unique about the property. He said there were several other undersized lots in the area and the setbacks were being encroached upon in new ways. He said there was not sufficient uniqueness about the scenario. He said the applicant was asking for a substantial increase in vertical height and did not have enough justification for it. He said the variance request also failed being in compliance with the ordinance related to the general characteristics of the neighborhood. He said the ordinance was trying to keep garage structures in the area to a minimal size, and he did not think that there was enough of a characteristic established to indicate that there is a strong correlation in this neighborhood that says that this type of construction and these types of setbacks and garages of this size are a character of the neighborhood and in keeping with the neighborhood. He said the application failed the hardship and spirit of intent criteria. Mr. Sullivan concurred. He said that, based on the abutters' comments, he doubted whether the applicant met any of the criteria. He said he mentioned Fisher v. Dover because it seemed unlikely that the applicant would return with a proposal that did not contain a two-story garage, so anything the applicant came back with would have a Fisher v. Dover problem.

*The motion **passed** by a vote of 5-2, with Mr. Nies and Vice-Chair Mattson voting in opposition.*

- E. REQUEST TO POSTPONE** The request of **Regan Electric CO INC (Owner)** and **Chinburg Development (Applicant)**, for property located at **94 Langdon Street** and **98 Cornwall Street** whereas relief is needed to merge the lots, demolish the existing structures and construct three new single-family dwellings which requires the following: 1) Variance from Section 10.521 to allow 88 feet of frontage where 100 feet is required. Said property is located on Assessor Map 139 Lots 1 and 8 and lies within the Mixed Residential Business (MRB) District. **REQUEST TO POSTPONE (LU-25-175)**

#### **DECISION OF THE BOARD**

The petition was postponed to the March meeting.

### **III. ADJOURNMENT**

The meeting adjourned at 10:07 p.m.

Submitted,  
Joann Breault  
BOA Meeting Minutes Taker