

**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 26, 2026

MEMBERS PRESENT: Beth Margeson, Chair; Jeffrey Mattson, Vice Chair; David Rheaume; Paul Mannle; Thomas Nies; Robert Sullivan

MEMBERS EXCUSED: Thomas Rossi; Mike Lucas, Alternate

ALSO PRESENT: Jillian Harris, Planning Department

Chair Margeson called the meeting to order at 7:00 p.m. She asked for a vote to suspend the rules take New Business Item C, 221 Woodbury Avenue, out of order.

Mr. Sullivan moved to take Item C out of order, seconded by Mr. Rheaume. The motion passed unanimously, 6-0.

Chair Margeson noted that the applicant needed more time to provide additional information and clarification for his application.

*Mr. Sullivan moved to **postpone** the item to the June 16th meeting, seconded by Mr. Mannle. The motion passed unanimously, 6-0.*

I. NEW BUSINESS

- A.** The request of **Eldredge Place Condo Association (Owner)**, for property located at **40 Merrimac Street** whereas relief is needed to demolish the existing rear deck and construct a new deck which requires the following: 1) Variance from Section 10.521 to allow a 3.5-foot side yard where 10 feet are required. Said property is located on Assessor Map 129 Lot 18 and lies within the General Residence A (GRA) District. (LU-26-53)

SPEAKING TO THE PETITION [Video timestamp 5:50]

Owner Peter Carpenter of 40 Merrimac Street, Unit 1, was present on behalf of the Condo Association. He gave a brief history of the property and said the historic estate was eventually converted into three condominiums with a large deck. He said the three townhouse owners wanted to remove the deteriorated deck and replace it with a composite one with an additional two feet of depth. He reviewed the criteria and said they would be met.

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

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD [Timestamp 12:32]

*Mr. Nies moved to **grant** the variance for the application as presented and advertised. Mr. Mannle seconded.*

Mr. Nies said it was a minor change to an existing property, although it did encroach somewhat on what was considered a side setback, with an additional two feet. He said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance, in part because of the siting of the property and the buildings adjacent to it. He said it would not affect the health, safety, and welfare of the neighborhood and would have no effect on light and air on any of the buildings on either side of it because the buildings were quite distant. He said it would not alter the essential characteristics of the neighborhood, which was essentially a residential area. He said it would do substantial justice, noting that he could not see any benefit to the public by denial that would outweigh the loss to the applicant. He said a denial would keep the applicant limited to the current size of the deck once it was replaced, which would affect their enjoyment of the deck to a certain extent, but there would be no benefit to the public that would support denial. He said granting the variance would not diminish the values of surrounding properties, noting that no evidence was presented that it would. He said some abutters commented in favor of the change and did not raise any concerns about any impact on their property values. Related to the hardship criteria, he said the property has special conditions. He said it is a large lot with an unusual shape, and the location of the structure was also unusual because it is on one side of the property and has minimum setbacks on two sides of the property including where the deck is. Relating to the context of the neighborhood, he said the adjoining property structures were not nearby at all. He said the minor change to the deck will not have any impact on any of the abutters. Owing to those conditions, he said he did not believe that there was a fair and substantial relationship between the purposes of the ordinance and its specific application to the property. He said the proposed use, a slightly larger deck, is a reasonable use. Mr. Mannle concurred and had nothing to add.

The motion passed unanimously, 6-0.

- B.** The request of **801 Islington Street LLC (Owner)** and **Evergreen Yoga & Meditation, LLC d/b/a Studio 108 (Applicant)** for property located at **801 Islington Street, Unit 33** whereas relief is needed to establish a yoga studio which requires the following: 1) Special Exception from Section 10.440 Use #4.40 to allow a yoga studio more than 2,000 square feet gross floor area. Said property is located on Assessor Map 165 Lot 8 and lies within the Character District 4-W (CD4-W). (LU-26-54)

SPEAKING TO THE PETITION [Timestamp 16:20]

Attorney F. X. Bruton was present on behalf of the applicant Michael MacDonald, who was also present. Attorney Bruton said his client wanted to rent a studio in the facility known as Gallagher's Place. He said the company's name was Evergreen Yoga & Meditation and that they had yoga at their Stratham site but that the Portsmouth site was not intended to be utilized for yoga and instead would be limited to Pilates and therapeutic massage, which were lesser uses in terms of participants coming to the facility. He said the City determined that they should be under the yoga label, and that use required a special exception if it exceeded 2,000 sf. He said the unit they wanted to rent was 2,300 sf. He said they were able to deduct 194 sf of storage and were down to 2,175 sf. He said the Pilates would run from 6:30 to 11:30 a.m. when the rest of the plaza was not really being utilized. He said there would be 1-6 students in the morning and 2-3 users in the afternoon, so there would be a low impact. He said the prior use was a call center, so the need for parking would be identical. He reviewed the special exception criteria.

[Timestamp 22:33] Mr. Rheaume said he did not see anything in the floor plan labeled as Exhibit A or B and nothing showing where the unit would be in the plaza. Attorney Bruton said the unit would be at the end of the building on the second floor and would be called Studio 108. Chair Margeson asked what the businesses around the studio were. Attorney Bruton said there were a few restaurants, stores, a tanning salon, a barbershop, and sales and architectural offices.

Chair Margeson opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD [Timestamp 26:50]

*Vice-Chair Mattson moved to **grant** the special exception request as advertised and presented. Mr. Nies seconded.*

Vice-Chair Mattson said the standards as provided by the ordinance for the particular use are permitted by special exception, and in this case falls under the yoga studio category and would be small Pilates classes. He said granting the special exception would pose no hazard to the public or adjacent properties on account of potential fire, explosion, or release of toxic materials because those things did not apply to the applicant's type of business. He said it would pose no detriment to property values in the vicinity or change in the essential characteristics of any area including residential neighborhoods or business and industrial districts on account of the location and scale of buildings or other structures, parking areas, accessways, odors, smoke, gas or other pollutants, noise, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials. He said it would be a low intensity use for a small Pilates class. He said there would be no creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity because the use would be a low-intensity one and the hours would be earlier than other businesses in the vicinity, such as the restaurants that would cause increased traffic later in the day. He said granting

the special exception would pose no excessive demand on municipal services included but not limited to water, sewer, waste disposal, police and fire protection, and schools because there was no reason to think that an instructional Pilates class would cause such issues. He said it would pose no significant increase of stormwater runoff onto adjacent properties or streets because there would be no external changes to the building. Mr. Nies concurred and had nothing to add.

Chair Margeson said that Pilates was not specifically mentioned in the zoning ordinance, but in Section 10.440 there was mention of yoga or a similar use, so the use fell into that section of the zoning ordinance.

The motion passed unanimously, 6-0.

- C. The request of **Ryan Trust (Owner)** for property located at **221 Woodbury Avenue** whereas relief is needed to subdivide the existing parcel into two parcels for demolition of the existing one-story detached garage and construction of a new two-story detached garage on lot 1; and a new single-family residential structure on lot 2, which requires the following: 1) Variance from Section 10.521 to allow 63 feet of frontage where 100 feet is required. Said property is located on Assessor Map 175 Lot 10 and lies within the General Residence A (GRA) District. (LU-26-57)

DECISION OF THE BOARD

*Mr. Sullivan moved to **postpone** the item to the June 16th meeting, seconded by Mr. Mannle. The motion passed unanimously, 6-0.*

- D. The request of **Maximillian Kolbe Hochschwender (Owner)** and **Flybird LLC (Applicant)** for property located at **44 Rogers Street** whereas relief is needed to construct a rear addition to the existing residential structure which requires the following: 1) Variance from Section 10.521 to allow a 3-foot side yard where 10 feet is required; and 2) Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 116 Lot 45 and lies within the Mixed Residential Office (MRO) and Historic Districts. (LU-26-55)

SPEAKING TO THE PETITION [Timestamp 31:37]

Attorney Derek Durbin was present on behalf of the applicant Flybird LLC, along with Mark Gianniny of Portsmouth Architects. Attorney Durbin said the property was a small 3,485-sf lot with a 3-story single family home and a detached garage on it. He briefly reviewed the property's history and noted that a 2-story addition was later added to the rear of the home. He said the applicant wanted to demolish the ell addition and build a 3-story addition in the same footprint. He said the exterior staircase would be eliminated by the new addition and there would be no additional encroachment into the side yard setback. He said the applicant went before the Historic District

Commission (HDC) for a work session in April and received positive feedback, so he did not anticipate any material changes to the design plans.

[Timestamp 33:41] Mr. Nies said the left yard and right yard setback shown in the package were flipped. Attorney Durbin said it was an error. Mr. Rheume said the 3-ft setback off Lot 114-46 shown in the plan indicated a jut out of 1-1/2 feet that appeared to be what the existing addition had, and the intent was to replicate that. He asked if there was an intent to use the existing foundation or start with fresh construction. Mr. Gianniny said the foundation of the building to be demolished was really several foundations due to additions over the years and they could not be salvaged. He said a new foundation would follow the existing face of the wall on the right side of the building. Mr. Rheume asked if there was a structural reason for the need to be that much closer to the side property line as opposed to aligning it with the side of the existing home. Mr. Gianniny said they would follow the existing footprint and that it would also help differentiate the original building from the two later additions that would be reconstructed, which the HDC appreciated.

[Timestamp 37:19] Attorney Durbin reviewed the criteria.

The Board had no further questions. Chair Margeson opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD [Timestamp 41:20]

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

Mr. Rheume said the actual relief asked for was minor. He said it is a complete vertical expansion and there would be a teardown and rebuild of the existing addition, but when done it would look like there was one additional floor added to the property. He said no other relief was needed for anything other than the side yard setback. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said the essential characteristics of the neighborhood would be maintained. He said the addition would be in the rear of the property, and the lots were narrow and from the public's perspective, there would not be a lot of visibility of the additional bulk. He said there was an open parking lot area on the opposite side of the home that was not really like a street front. He said several other homes in the area had additions, and the applicant's addition would simply look like a taller addition compared to what was there now and would not excessively change the overall nature of the neighborhood. He said granting the variances would do substantial justice because the applicant was just looking for additional living space, which he said was a common situation in many parts of Portsmouth where the only opportunity to get additional living space was to provide an addition or expand one additional floor and fill in a bit on the second floor, as the applicant wanted to do. He said the increase in size on the second floor

would be toward the interior of the property, so the benefits the applicant would get compared to an addition on the back side of the property would be in his favor. He said granting the variances would not diminish the values of surrounding properties because it would be a relatively modest additional height to the addition and would be tastefully presented and continue to allow the home to be a fully functional single-family one. He said it would increase the applicant's property value and those of surrounding homes and would serve as a positive comparison for other neighboring properties. Relating to the hardship criteria, he said what was unique about the property was the narrow lot with the home situated on one side of it. He said it was an older home that had an addition in the back of it, and the applicant wanted to expand the addition and provided a strong rationale from a historic standpoint that offsetting it slightly would be a beneficial visual aid to help people understand what the natures of what the original home and the addition were. He said the neighboring property had their home situated in the same manner, so with that rhythm, the negative effects to light and air would be diminished. He said the positioning of the home was a unique characteristics and was just an addition of one story on that side of the property. He said it was a reasonable request to maintain a single-family resident use. Vice-Chair Mattson concurred and said it would be an improvement to the existing conditions.

The motion passed unanimously, 6-0.

- E. The request of **RRNR Revocable Trust (Owner)**, for property located at **111 Crescent Way** whereas relief is needed to demolish and reconstruct a detached garage which requires the following: 1) Variance from Section 10.573.20 to allow a 3-foot left side yard and a 4-foot rear yard where 8 feet is required from any lot line. Said property is located on Assessor Map 212 Lot 151 and lies within the General Residence B (GRB) District. (LU-26-58)

SPEAKING TO THE PETITION [Timestamp 48:09]

The builder Jeff Trovato was present on behalf of the applicant. He said the request was to replace the existing deteriorating garage with a code-compliant building in the same dimensions. He reviewed the criteria.

[Timestamp 52:04] Mr. Sullivan asked what the term "structural racking" meant. Mr. Trovato explained that over time, a building could start to lean if it was not properly supported laterally. Mr. Rheume asked Ms. Harris how the City Staff arrived at the 8-ft conclusion of the building's height and setback requirement with the odd roof configuration. Ms. Harris said the building had a different height on one side than the other, so the City took the average of the two. Chair Margeson asked what was in the garage structure. Mr. Trovato said it was basic storage. Chair Margeson asked if it would continue to be used as storage, and Mr. Trovato said it would or it could be a workshop. Chair Margeson asked what the tiny structure next to the garage was. The owner Russell Rogers was present and said the structure was like a self-assembled Amazon shed but was sold and removed. Chair Margeson said it looked like there was an aluminum fence and a wooden fence in the corner of the property. Mr. Trovato said there was a jog in the fence and that the fence was

made of different materials. Chair Margeson asked if the lot line was the wooden fence. Mr. Trovato said he thought the real lot line on that side was closer to the farther fence. Chair Margeson asked if the fence extended to the back of the property. Mr. Rogers said the part of the fence with the jog was really to keep their dog contained and that the other fence went to about the lot line. Mr. Rheume said some of the photos showed the garage to be very close to the neighboring garage. He asked if there was a concern about the ability to have future maintenance with that narrow distance between the two garages. Mr. Trovato said he would use a shallow foundation and would go 18 or 24 inches deep for a footing instead of deeper to avoid undermining the adjacent garage or fence. Mr. Rheume asked if a ladder could fit to do basic maintenance on that side of the garage. Mr. Trovato agreed and said the 36-inch distance between the roofs would not be changed.

Chair Margeson opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD [Timestamp 59:18]

*Mr. Rheume moved to **grant** the variance for the application as presented and advertised Mr. Sullivan seconded.*

Mr. Rheume said there is no vertical expansion and that it is simply a 100 percent rebuild of a garage structure that went back many years. He said it could become an issue over time, so the applicant wanted to replace it in kind and in the same location. He said the structure was a sizable one, with an added-on shed/workshop on the side of it that adds to some of the bulk, but it is a modest accessory structure. He said the averaging of the height is eight feet and reasonable, and even though it is close to the property edge, it probably can be maintained satisfactorily. He said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said it spoke to the general characteristics of the neighborhood and what the ordinance was trying to accomplish, and that light and air was mostly what the Board was concerned about. He said the structure existed for many years and there was a similar structure on the neighboring property. He said each structure was forced to be close to the other due to the nature of the small backyards and the driveway arrangement between the two structures. He said light and air, while impeded, was not a large condition because it was really two garages that are not being intensified by the request. He said substantial justice would be done because the applicant would get the benefit of restoring their garage space to being fully usable and safe and having more storage area. He said the applicant was not asking for anything additional so there really was no general public interest that would outweigh the benefits to the applicant. He said granting the variances would not diminish the values of surrounding properties because the applicant would just renovate an existing structure into a better condition that would add to the property's value and those of the surrounding properties. He said literal enforcement of the provision of the ordinance would result in an unnecessary hardship. He said the neighborhood layout in 1917 resulted in close property lines

and driveways and the applicant was close to the shared driveway, so the structure needed to be close to the front and rear property lines. He said the structure would be modest in height and its impact on the neighborhood would be minimal. He said the additional structure would be toward the interior of the property and would still be an 8-ft high structure. Mr. Sullivan concurred and had nothing to add. Chair Margeson said her concerns about the lot lines would be addressed when the building permit was pulled and would likely need a survey.

The motion passed unanimously, 6-0.

- F.** The request of **Hill Hanover Group LLC C/O JPK Properties LLC (Owner)** for property located at **181 Hill Street** whereas relief is needed to demolish three existing multi-family buildings and to construct two new three-story multi-family buildings connected by an underground parking garage and elevated courtyard area which requires the following: 1) Variance from Section 10.5A41.10A to allow a) 1,008 square feet of lot area per dwelling unit where 3,000 feet is required, b) a building footprint of 5,232 square feet where 2,500 square feet is the maximum, c) a building footprint of 3,035 square feet where 2,500 square feet is the maximum, d) 18% open space where 25% is required; and 2) Variance from Section 10.440 to allow 10 dwelling units in a building where up to 8 dwelling units are permitted. Said property is located on Assessor Map 125 Lot 14 and lies within the Character District 4-L1 (CD4-L1). (LU-26-59)

Attorney Derek Durbin asked for more time to present the application.

Mr. Rheaume moved to allow the applicant 25 minutes to present the application, seconded by Mr. Sullivan. The motion passed unanimously, 6-0.

SPEAKING TO THE PETITION [Timestamp 1:08:18]

Attorney Derek Durbin was present on behalf of the applicant, along with the owner Bruce Sommer, Cory Belden of Altus Engineering, Brian Desjardins and Mark Gianniny of Portsmouth Architects, and Jeff Sabin of JPK Properties. Attorney Durbin said the property was a 16,127 sf lot with three separate 4-unit multi-family buildings on it. He said the property was the largest one in the CD4-L1 zone and was bordered by streets on three sides, and it was in a transitional area between zoning districts and also between the downtown center and the West End. He said building residential densities and land use varied quite a bit on that area. He said the massing, size, and height tapered down from the West End. He said the property was also nonconforming with respect to maximum building block length, open space, and lot area per dwelling unit. He said it would not make sense to rehabilitate the buildings and would make more financial sense for the applicant to redevelop the property. He said the applicant wanted to demolish the existing buildings and develop two separate buildings connected by an elevated courtyard and underground garage. He said Building A would have 10 units and Building B would have 8 units.

[Timestamp 1:12:40] Mr. Gianniny reviewed the site plan. He said the existing buildings were three separate 2-story structures with a total of 12 units. He said Hill Street became a private drive that continued to the west and then connected back to Hanover Street, and he said that access would continue. He said the current parking was ten service parking spots, with two driveways that provided parking and six parallel spots along the private part of Hill Street. He reviewed the density analysis, neighborhood context, and proposed site plan. He said they proposed two buildings and that Building A would be three stories high with two units per floor, and Building B would be three stories high with 10 units. He said the courtyard between the buildings would provide open space. He reviewed the square footage of each building. He said they proposed 36 parking spaces, which were 12 more than what existed now. He said 17 spaces would be in the parking garage and five additional service parking spots and some ADA spots would be in the back of the property. He said the applicant also had 14 deeded spots in the garage across the street. He said the plans were scaled down at the TAC and Planning Board meetings to break up the mass. He said the feedback from surrounding neighbors was also considered which affected the designs.

[Timestamp 1:31:34] Mr. Desjardins described the designs of the two building masses and noted that there was a 5-ft grade difference from west to east on the property. He said the roof lines matched the grade difference and that the total approach aligned with the character district as opposed to more contemporary boxy buildings. He showed the massing in the 3D model and said it did not stand out compared to adjacent lots like the Foundry Place.

[Timestamp 1:29:29] Attorney Durbin reviewed the criteria.

[Timestamp 1:36:24] Mr. Sullivan said the applicant proposed to demolish the existing buildings and would be left with a vacant lot. He asked why a building that complied with the zoning ordinance could not be built. Attorney Durbin said it would leave the property out of context with what it was surrounded by and would also leave a vastly underutilized property and some oddly-configured buildings on the property. Mr. Sullivan asked if “underutilized” meant that the applicant would not be able to maximize the financial value of the construction. Attorney Durbin said if the property were to be developed with oddly-shaped buildings on it and met the strict ordinance requirements, it would end up with larger units and significantly higher priced points to offset the redevelopment costs and probably maximize the building height. Mr. Sullivan said it would then be possible to design a building in compliance with the ordinance. Attorney Durbin said the result would be out of character with the surrounding neighborhood and would not meet the spirit and intent of the ordinance. Mr. Rheume referred to the zone’s minimum lot size and lot area per dwelling unit and said the applicant’s property was five times larger and that five single-family homes could be placed on the lot, but the current structures on the property were multiple dwellings and the lot was unique vs. the mental model for the zoning ordinance. He said his concern was that the applicant was proposing something at the higher end of the allowable front lot line buildout range and maxing out what the ordinance allowed. Mr. Desjardin said 72 percent of the existing lot line buildout was causing the existing condition to be noncompliant in the maximum building block length as well as the open space because the space between the buildings did not meet the zoning defined spacing to actually consider them separate buildings. Mr. Rheume said the additional

parking was also not open space. He asked why the total lot line buildout was 80 percent instead of the lower 60 percent and what drove the design for that. Mr. Gianniny said it was to provide the open space between the buildings. He said the buildout of the lot line included the entire footprint of the parking garage and the courtyard and they were adding more air and light and providing two separate buildings. Mr. Rheume said one of the main characteristics of the existing buildings were the open porches that provided an interaction with passers-by in the neighborhood and added to the streetscape of that portion of Hanover Street. He said the proposed design of Juliet balconies did not have that interactive feel. He asked if any of the open space could be reconfigured to recreate some of that interactivity with the streetscape community. Mr. Desjardins said the intention of the open courtyard was to be more inviting and to activate that particular area since it would be the main entry point for the units. Mr. Rheume said the façade glazing in the table was not calculated for proposed or existing. He asked if the project would end up in the allowable percent range. Mr. Desjardins said he thought they would end up in that range but had not nailed down a specific dimension because it could dedicate a specific size of windows. Mr. Rheume said the calculation was 21.4 percent but the applicant was asking for 18 percent relief. He asked what the 3 percent cushion was for. Mr. Belden said utility requirements could require another add-on site or additional features and he wanted to ensure that there was flexibility for any minor changes that would occur. Mr. Rheume said five on-street parking spots shown on the plan that did not include an ADA spot. He asked why the applicant had 11 more spaces than they needed and why they would dedicate that area to parking instead of adding it onto the open space. Mr. Belden said, based on the parking requirements for the site, there were 20 spaces for 16 units, and they provided 21 spaces on site plus an ADA one. Mr. Rheume asked if the applicant would take advantage of the off-site spots. Mr. Belden said the owner had a lease agreement of ownership of off-site parking but the intent was to meet all of the parking requirements on site with the basement garage. He said the basement garage would be for residents, and some of the exterior surface stalls would be for on-site visitors.

[Timestamp 1:50:20] Vice-Chair Mattson said the applicant's maximum building footprint was too big, there were more dwelling units per building than allowed, and the open space requirements were not met, so it seemed that the ordinance would be pushing for more like what was already there for three separate buildings. He said if it was broken up into three buildings, the applicant could still achieve 60 percent buildout while also becoming much closer to meeting the other variance criteria. He said it would also result in the lot area per dwelling becoming closer to conforming. He said it was not clear to him why the applicant's design was being pushed. Attorney Durbin explained that the separation into three different buildings would make it noncompliant with the maximum building block and end up with not enough spacing on the property to comply. Vice-Chair Mattson said he understood the argument about the bigger lot but it seemed that the reason for the maximum footprint was that a big boxy building type was undesirable, based on public comments through the Master Plan process. He said the applicant could have more broken-up buildings on a bigger lot, or a smaller lot with fewer buildings. Mr. Desjardins said they were keeping in mind the maximum building block length and wanted to keep the building massing in the footprint aligned with the other intents of the ordinance. He said breaking the 80-ft maximum into one or two would be fine but the buildings would start to get very tight, light and air would be

reduced and the window openings between buildings would be restricted, all of which would cause a less desirable location. It was further discussed.

Chair Margeson opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION [Timestamp 1:46:08]

Matthew Drennin of 329 Hanover Street said none of the units were landlocked, so they would all have light and air. He said it was a good idea to maximize the square footage so that the amount of units could be maximized. He said the owners had always served the neighborhood well.

Bill Downey of 67 Bow Street (via Zoom) said the density would go above 33 percent, which was what happened when a city grew, and sometimes the existing regulations are outdated. He said a lot of the people in the West End were younger and had a difficult time affording living in Portsmouth. He said the zoning ordinance was behind the curve on what the City is and what the citizens want. He said the owner was making a good-faith attempt at working with the citizens.

The property owner Bruce Sommer said he worked with the neighbors on the design. He said the proposed Juliet balconies were part of the neighborhood's character. He said he considered adding a third floor but three floors would make it look out of character. He said the density was adjusted by adding additional parking spaces on the property and having the traffic flow on Hill Street.

Attorney Durbin said he had several letters in support that were rejected by the City because they were not turned in on time. Chair Margeson accepted the letters.

SPEAKING IN OPPOSITION OR SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DISCUSSION OF THE BOARD [Timestamp 2:10:30]

Mr. Nies said the zoning table indicated how many dwelling units were allowed, and he asked whether it was dwelling units per lot or per building. Ms. Harris said it was per building. It was further discussed. Vice-Chair Mattson explained why he could get on board with some of the criteria being met but thought it was a hard justification to say that there was a hardship for why the building footprint needed to be bigger than what was allowed. Mr. Rheaume said the applicant was requesting something five times larger than the model for the CD4-L1 zone. He said he thought the two proposed buildings made sense more than the three current buildings because the narrow space between those buildings were a fire hazard and only usable for some parking. He said the proposed open space and connectivity to the community made sense. He said he struggled with the buildup of variances that started tipping the balance. He said the applicant was asking for a lot of relief. He said he was comfortable with Building A but thought it really came down to Building B with eight units. He said if the total number of dwelling units was reduced in that building and the square

footage was reduced, it would create more open space that would enhance the engagement of the buildings to the community and to each other. He said there were opportunities to reduce some of the requested variances.

[Timestamp 2:22:21] Mr. Nies said the applicant had a blank slate by tearing down the existing three buildings and there was opportunity to create open space, which the applicant was doing, but he was concerned about the reduction in the lot area per dwelling unit due to the increased density. He said that seemed to be driven by the ten units in the second building. He said it did not really comply with the spirit of the ordinance with respect to how the ordinance wants CD4-L1 to work. He said he was concerned about the magnitude of the variance requests and how they interacted with each other. Chair Margeson said she would not support the application because the property would be a blank slate. She said CD4-L1 was something that was brought into the zoning ordinance fairly recently. She said the vacant lot could be redeveloped in accordance with the ordinance, as admitted by Attorney Durbin. She said the applicant did not have a hardship. Mr. Mannle agreed with Mr. Rheume's statements that a lot of the project was driven by Building B. He said if eight units were proposed, it would eliminate that variance request and others as well. He said he was willing to have some leeway with the variance requests because downtown was heavily built out beginning from the West End, but he thought going from eight units to 16 was too big of a leap. Mr. Nies said the project was over twice the size of the maximum building footprint.

DECISION OF THE BOARD [Timestamp 2:28:06]

*Mr. Rheume moved to **postpone** final determination on the application until the July meeting, with the direction to the applicant that the application be revised such that Variances 1D and 2 are eliminated and Variance 1B is changed such that it is a smaller number than what is being presented now. Mr. Sullivan seconded.*

Chair Margeson said the Board should only be continuing or postponing applications for more information, not to give the applicant the benefit of their thoughts about the application and giving the applicant the opportunity to revise them. She said it was not within the purview of their rules. She said the motion had to vote it up or down and allow the applicant to take whatever actions they wanted to.

*The vote resulted in a tie, 3-3, with Mr. Nies, Mr. Mannle, and Vice-Chair Margeson voting in opposition. The motion **failed**.*

Mr. Nies asked if there could be a motion to deny without prejudice. Ms. Harris said the Board would have to determine that they lacked sufficient evidence. Chair Margeson said the Board had enough evidence but could address the variance request separately, which she was not in favor of because she thought it was better to address the petition as a whole package.

*Mr. Mannle moved to **deny** the application as presented.*

He said his motion was based on the failure to meet the hardship criteria because it was a clean slate and should not need any variances. He said he did not believe that the application met the hardship as stated in Criteria 10.233.25 He said there was no reason why any application could not meet all the zoning criteria.

No one seconded the motion. Mr. Mannle withdrew his motion.

*Mr. Nies moved to **deny** the application on the basis that several elements did not meet the spirit of the ordinance, Criterion 10.233.22.*

Mr. Nies said the CD4-L1 zone was designed to do a step down from the downtown area into residential areas, and it established some specific requirements for lot area per dwelling unit. In addition, he said the application conflicted with the size of the buildings and the number of units per building requirement in the ordinance without really explaining why it was necessary. He said the proposed size of Building B was twice the size of the maximum building footprint and was asking for 10 residences where eight were called for, and the lot area per dwelling unit was decreasing from what now existed.

Mr. Mannle seconded the motion. The motion passed by a vote of 5-1, with Mr. Rheume voting in opposition.

II. ADJOURNMENT

The meeting adjourned at 9:43 p.m.

Submitted,

Joann Breault
BOA Meeting Minutes Taker