

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

7:00 P.M.

June 16, 2026

MEMBERS PRESENT: Beth Margeson, Chair; Jeffrey Mattson, Vice Chair; David Rheaume; Thomas Nies; Thomas Rossi; Robert Sullivan; Mike Lucas, Alternate

MEMBERS EXCUSED: Paul Mannle

ALSO PRESENT: Stefanie Casella, Planning Department

Chair Margeson called the meeting to order at 7:00 p.m. Alternate Mike Lucas took a voting seat for the evening.

Mr. Rossi moved to suspend the rules to take New Business, Item F, 72 Mirona Rd, out of order. Vice-Chair Mattson seconded.

Chair Margeson read the petition into the record. She said the applicant asked for it to be postponed to the July meeting. Ms. Casella said the reason for the request was that the applicant had a personal conflict that prevented him from attending the meeting.

*Mr. Rossi moved to **postpone** the petition to the July 21st meeting, seconded by Mr. Rheaume. The motion passed unanimously, 7-0.*

Old Business Petition C, extension request for 0 Melbourne St, was taken out of order (there was no motion).

Mr. Rheaume moved to grant the one-year extension, seconded by Mr. Sullivan.

Mr. Rheaume said the applicant stated financial concerns as the reason for the extension request. He said the applicant came before the Board on two separate projects and was working on both, so the financial issues were understandable. He said the usual two-year window was generous to get a permit, but in this case he thought the Board could grant the one-year additional extension. Mr. Sullivan concurred and had nothing to add.

The motion passed unanimously, 7-0.

I. APPROVAL OF MINUTES

A. Approval of the May 19, 2026 meeting minutes.

Mr. Rheaume moved to approve the May 19 minutes as amended. Mr. Nies seconded.

Mr. Nies said the sentence under paragraph B, the approval of the April 21 minutes, should read a 1.3 acre lot and not 0.13 acres.

Note: Upon review of the April 21, 2026 application materials and video recording, it was determined that 0.13 is the correct lot area.

The motion passed unanimously, 7-0.

B. Approval of the May 26, 2026 meeting minutes.

Vice-Chair Mattson moved to approve the May 26 minutes as amended, seconded by Mr. Rheaume.

Vice-Chair Mattson said the first sentence in the second paragraph on page 10 should read: “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.” (The word ‘like’ was substituted for the words ‘more than’).

Mr. Rheaume said a sentence in the first paragraph on page 10 should be changed to read: ‘He asked if the project would end up in the allowable percent range.’ (The number ‘21.4’ was changed to ‘allowable’).

The motion passed unanimously, 6-0, with Mr. Rossi abstaining.

II. OLD BUSINESS

- A.** The request of **Portsmouth Historical Society (Owner)**, for property located at **43 Austin Street** whereas relief is needed to convert a single-family home to an office use which requires the following: 1) Variance from Section 10.440 (Use #5.10) to allow professional office space where it is not permitted. Said property is located on Assessor Map 127 Lot 27 and lies within the General Residence C (GRC) and Historic Districts. (LU-26-43)

Mr. Rheaume recused himself from the following petition.

SPEAKING TO THE PETITION [Timestamp 11:42]

Emma Stratton, Executive Director of the Portsmouth Historical Society, was present. She said in 2021, the Historical Society received 43 Austin Street as a request from the owner Peter Beck, with a restriction that prohibited the Historical Society from selling the property. She said the building was beyond their means to repair and that a single-family home rental had no realistic market in a home of that size. She said a professional office use would be the only path that could attract a development partner willing to fund the work. She said Dr. Beck operated his practice out of the 43 Austin Street residence for decades, which was evidence that the building had a history of

functioning as a professional residence without impacting the neighborhood. She said they would need about 14 parking spaces on site. She reviewed the criteria.

[Timestamp 20:32] Mr. Rossi asked if a development partner was identified. Ms. Stratton said they were talking with one partner but had no signed agreement with them. She said the variance was a requirement in order to move forward with any development. Mr. Nies asked if Ms. Stratton broached the option of trying to get the terms of the trust changed. Ms. Stratton said she did by asking the Attorney General to review the terms of the trust and change it. It was further discussed. Mr. Nies asked if there was some guidance in the will on what would happen should the Society want to abandon the property. Ms. Stratton said the trust was specific in stating that if the Society does not wish to maintain or benefit from the property, there are other alternatives, like transferring to another non-profit that would have the same restrictions or transferring it to Dartmouth University for a scholarship fund. She said they wanted to explore all the options by which the Society would benefit from the property instead of passing it to another non-profit that would not have ties to Portsmouth. Mr. Nies asked if the vision was that the building would be broken up into individual professional offices. Ms. Stratton said they would want to have one tenant for the whole building in order to maintain its historic fabric. Vice-Chair Mattson asked if the Society was considering any portion of the office space. Ms. Stratton said they might in the future.

Chair Margeson opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION [Timestamp 27:42]

Jackie Crota of 99 Hanover Street said she was the trustee of the trust and had a high regard for the Portsmouth Historical Society and how they were addressing the project.

Brad Landon of 64 Austin Street said he was a member of the Portsmouth Historical Society and supported their plans to preserve the building and its use. He said his only concern was the parking issue and that he would hate to see the front lawn turned into a parking area.

Reagan Ruedig of 70 Highland Street said she was on the board of the Historical Society when they had the transfer of property request. She said it was a complicated thing if it was even in the best interests of the Society to accept the gift, but they decided that it was too much of an opportunity to turn down. She said she was a historic preservationist and went through the home many times to assess its condition, and an architect was hired to do an assessment report. She said they concluded that office use for the building made the most sense and would be least impactful.

Andrew Samonas of 296 Jones Ave said he had been working in an advisory role with the Society to preserve the property. He said they explored several options but decided that the office made the most sense for the house and the neighborhood.

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

No one else spoke. Chair Margeson asked what the status of the attached building to 43 Austin Street was. Ms. Stratton said it was privately owned. Chair Margeson asked if the parking would be in the back, and Ms. Stratton agreed.

Chair Margeson closed the public hearing.

DECISION OF THE BOARD [Timestamp 37:34]

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

Mr. Rossi said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said part of the purpose of the ordinance was the preservation of historic districts, buildings, and structures of historic interest. He said the way it was worded was historic districts and buildings and did not require that those buildings be in the Historic District, so he believed it was consistent with the intent and spirit of the ordinance. He said substantial justice would be done because the loss to the property owner that would be experienced by denial of the variance would outweigh any potential gain to the public. He said the calculus was in favor of the property owner because preserving a historic structure in that prominent location would be very much to the benefit of the public. He said it would not diminish the values of surrounding properties, noting that the property had been used in a similar fashion at points in time throughout its history, and continuing the office use in some fashion would unlikely affect the surrounding property values. He said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. He said part of the hardship was that the Society received the property through a bequest and could not sell it and had to find a way to salvage it or it would go into ruin. He said the conditions of the property would require a substantial amount of investment to make it usable, and due to the restrictions of not being able to sell it to a commercial developer, the proposal was the only viable path forward. He said the proposed use is a reasonable one. Mr. Nies concurred. He said normally he would be concerned about allowing a professional office building in a residential area, but it was such a unique property that he thought it was well justified.

Mr. Sullivan said he was familiar with the property and that everything Ms. Stratton told the Board was true. Chair Margeson said she would support the motion. She said it was a change in use because it was General Residence C, but the applicant made a compelling argument as to why it could not be used as a residential use. She said there were special conditions with the trust, and the property bordered the Mixed Residential Office (MRO) District, so the spirit and intent criterion was satisfied because it would not really change the general characteristics of the neighborhood.

The motion passed unanimously, 6-0, with Mr. Rheume recused.

- B. POSTPONE TO JULY** The request of **Lonza Biologics INC (Owner)**, for property located at **34 Harvest Way** whereas relief is needed to install two illuminated wall signs and one illuminated monument sign, which requires relief from the following: 1) from Section 306.01(d) of the Pease Development Authority Ordinance to allow signs to exceed a maximum aggregate area of two (2) square feet of sign area for each linear foot of street frontage up to a maximum of 200 square feet. Said property is located on Assessor Map

305 Lot 5 and lies within the Airport Business Commercial (ABC) District. **POSTPONE TO JULY** (LU-26-12)

DECISION

*The petition was **postponed** to the July 21st meeting per the applicant's request.*

C. 0 Melbourne Street – Extension Request (LU-24-109)

DECISION OF THE BOARD

*Mr. Rheume moved to **grant** the one-year extension, seconded by Mr. Sullivan. The motion passed unanimously, 7-0.*

- D. POSTPONE TO JULY** The request of **Hope for Tomorrow Foundation (Owner)**, for property located at **315 Banfield Road** whereas relief is needed to construct an addition to the existing school on the property, which requires the following: 1) Variance from Section 10.334 to allow the existing primary and secondary school use (Use #3.21) to be extended to another part of the remainder of the land. Said property is located on Assessor Map 266 Lot 5 and lies within the Industrial (I) District. **POSTPONE TO JULY** (LU-26-41)

DECISION

*The item was **postponed** to the July 21st meeting per the applicant's request.*

- E.** The request of **Port Hunter LLC (Owner)**, for property located at **361 Miller Avenue** whereas relief is needed to construct a detached garage with a professional office space on the second floor, which requires the following: 1) Variance from Section 10.573.20 to allow a) 6 foot side yard where 10 feet are required, and b) 10 foot rear yard where 20 feet are required; and 2) Variance from Section 10.440 Use #5.10 to allow a professional office use where it is not permitted. Said property is located on Assessor Map 131 Lot 33 and lies within the General Residence A (GRA) District. (LU-25-76)

SPEAKING TO THE PETITION [Timestamp 44:12]

Attorney Colby Gamester was present on behalf of the applicant, along with the owners Elizabeth and Tim Pesch. He said they were before the Board in July 2025 and received approval for a 24'x24' two-story garage. He said the owner's intent had always been to have a usable second floor as an office, but the City concluded that the ordinance's Home Occupation category did not fit the request and that the closest defined use in the ordinance was Professional Office. He said the proposed office would not be a commercial enterprise and would only be used by the owners. He reviewed the criteria and suggested four conditions of approval.

[Timestamp 59:12] Mr. Sullivan said there was opposition from the abutter Tim O'Brien, who also had some eye-catching photos. Attorney Gamester said he reviewed Mr. O'Brien's letter and that

the things Mr. O'Brien was concerned about were the things the applicant was trying to strip back from having to apply for the Professional Office category. He said they just wanted the opportunity for the owners to use the garage's second floor as they wished during working hours. He said the photos showed the driveway and parking situation during the process of the dilapidated garage being removed. Mr. Rossi said the dimensional relief requested was not the same as what was granted in the last variance, and he asked if it had changed because of the structure's height.

Attorney Gamester agreed and said the roof was redesigned and created more massing within the setback, but the actual perimeter of the building had not changed. Mr. Rheume asked how big the business was. Attorney Gamester said each property was owned by a different LLC, and he cited several buildings that the applicant owned. Mr. Rheume asked what the driver was for this particular property to be the choice location out of the other properties the owner owned. Attorney Gamester said the lot coverages that the other buildings had were smaller and the buildings were bigger. Mr. Rheume asked why Attorney Gamester said the properties at 263 Rockland and the Margeson Apartments were similar. Attorney Gamester said they were more commercial properties but there was an administrative function at each one. It was further discussed. Mr. Rheume asked if there would be a specific parking spot reserved for the office use. Attorney Gamester said they had not gone that far yet and had to change some of the parking calculations. Vice-Chair Mattson said Attorney Gamester mentioned the special conditions of the property but it seemed that the intensity of the use could be a negative toward granting the variance because it was already an overly intensive use. Attorney Gamester said the intent was not to over intensify, but they wanted the ability to go to the office during off-peak times of parking demand from the tenants.

[Timestamp 1:10:48] Mr. Nies asked if Attorney Gamester was suggesting that the change in the parking requirements meant that the applicant would need fewer now than last year. Attorney Gamester agreed and said they would probably move forward with a Conditional Use Permit (CUP) requesting a deviation from the parking regulations. Mr. Nies said Attorney Gamester's second condition stated that the second-floor space would not be used as a space for employees or for regular meetings with them and other members of the public. He asked what that meant and if it was possible that the public or tenants would come into the office space to meet with the landlords. Attorney Gamester said the applicant did not intend to have people driving to the lot and parking to have regular meetings and that they always met tenants at the properties. Mr. Nies said he was nervous about the vague language of a 'regular meeting'. He said if people wandered in occasionally during the week, it could be a parking problem for the neighborhood. Attorney Gamester said they were trying to pull back from the idea that the building was a service-oriented one that had clients coming to it. He said the applicant would be happy to wordsmith any condition with the Board. Mr. Nies said the Board received an email from an objecting abutter. Attorney Gamester said he was not aware of the email. He said Mr. Pesch spoke with every abutter at that time to ensure that they understood and that they did not object.

Mr. Lucas asked why the applicant could not rent office space elsewhere. Attorney Gamester said they were building the structure already and it would be more efficient. Mr. Lucas asked how the applicant differentiated from either personal gain or circumstances that would require a variance for a use when the property could already be used in a conforming method. Attorney Gamester said

finances were a part of it and the applicant wanted to consolidate their uses. Mr. Rossi said the height of the garage changed the setback requirement and asked why the location was still the appropriate one for the garage. He said Spot 1 and Spot 4 for parking were on opposite sides of the garage, with a long walkway from the main house to the garage. He said there was significant encroaching, and he asked why those two spots were separated instead of moving the garage closer to the house and conforming to the setback and having a shorter walkway. Attorney Gamester said it still related to the original granted relief. He said the tree drove the entire location and design of the garage, and the ability to pull in and out and turn around was also an issue. Mr. Rossi asked why the left side of the garage would not be accessible if it was turned. Mr. Pesche said they tried to line the garage up with the neighbor's so that it would not impact their view. Mr. Rossi said it seemed that the added height would dissatisfy the abutters to the rear and left. Attorney Gamester said the two variance requests were separate and if they were denied, there would still be a building that would be built in that location and they could figure out what that space would be used for.

Chair Margeson verified that there would be no employees for Hunter LLC, so the owner would manage their three properties from that office. She asked where the leases and agreements would be processed. Attorney Gamester said they would be processed on the computer in the office space, and the owners would meet the tenants at their properties for showings and other issues. Chair Margeson asked what was in the storage units that would be emptied. Mr. Pesch said there were leftover materials that had not been used, like a vanity, and they wanted the space to store old films and documents. It was further discussed. Chair Margeson said it was a professional office use and not just a laptop on a table. Ms. Pesch said she did business from her cell phone and needed the storage. She said she wanted it to be like a home office. It was further discussed.

Chair Margeson opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION [Timestamp 1:31:42]

No one spoke.

SPEAKING IN OPPOSITION TO THE PETITION

Tim O'Brien of 396 Miller Avenue said he was concerned about the introduction of Professional Office use into a residential neighborhood, the parking, and the broader impact on the residential character of the neighborhood. He said the most important issue was whether the applicant demonstrated the unnecessary hardship for granting a Professional Office use.

Pamela Esposito (via Zoom) of 470 Richards Avenue said the purpose of setbacks was to preserve the ability for residents to have a good quality of life, but now they had an imposing structure peering into their backyard. She said the exception would eventually outdate the owners.

Erik Stien (via Zoom) said the structure was previously approved to be much closer and it changed the character of their backyard by obstructing their light.

SPEAKING TO, FOR, OR AGAINST THE PETITION [Timestamp 1:41:24]

Elizabeth Pesch explained that the slab was down to protect the tree's roots during construction. She said they would do a pervious asphalt paving to improve the drainage. She said they had no problem if it were put in writing somewhere in the zoning as a covenant that the office could not be used for anything other than a home office.

Owner Tim Pesch explained how the parking would be beneficial.

Monica Kaiser said she managed several rental units and verified that the applicant's project would not involve meeting tenants at their home. She said everything was electronic and most conversations were held on the phone or on Zoom. She said she did not see it as a high traffic situation. She explained why the Professional Office use in the ordinance was very specific.

Attorney Gamester said the use was reasonable and akin to a home occupation use, and the hardship was the one created by the physical attributes and use of the property. He said the garage would be there no matter what. He said if their proposed conditions were issues, they could tighten them up.

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

DISCUSSION OF THE BOARD [Timestamp 1:51:05]

Mr. Rheume said the curtain got pulled back just a bit more every time on what was really happening. He said the applicant basically wanted a remote home office. He said he thought the term "home" had a distinct meaning and was a place where one resides and has investment in the outcomes of everything that takes place in it, and a home office is not someone's home. He said the applicant was trying to stipulate their way into creating this new item in the zoning ordinance. He said there were already four conditions and that the applicant kept saying they could be diced up. He said he would be concerned about the Board taking an action to create the new category when they had not thought about all the ramifications, and he struggled to see what was unique about the property that said it had special characteristics. He said it was already an intensively used property and in the middle of a very residential area, and an office use was not an allowed use in all the nearby zones. Mr. Rossi said he saw a property owner who got caught up in a bureaucratic vice not of their own making, coming out of the fact that the applicant did not have a residence on the property, so therefore it was not their home. He reviewed some of the restrictions that could potentially be used to refine the conditions that the applicant offered, and he said they could get refined in such a manner that functionally it would be identical to what is allowed in the district. Mr. Nies said when the Board previously considered the property, Home Occupation use was a matter of right for an accessory structure, so they did not discuss whether they were in favor of a home office or not. He said he was concerned about the building being higher, which increased some of the setback nonconformities. Chair Margeson said she would not support the application because it was not a home office and it was not the applicant's dwelling, and they had not established a hardship.

DECISION OF THE BOARD [Timestamp 2:00:12]

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

Mr. Rossi referred to criteria 10.233.21 and .22 and said the neighborhood was not designed for office use and was strictly residential. He said granting the variances would substantially alter the character of the neighborhood by allowing a professional office. He said substantial justice was not a factor for denying the variance because it did not fail that criterion, 10.233.23. Relating to criterion 10.233.24, not diminishing the values of surrounding properties, he said that was another reason for the application's failure. He said due to the increased height of the structure and converting it to a professional office use, the encroachments on the lot line setbacks would become more significant to the surrounding properties. He said wherever the applicant put the garage would require bigger setbacks to relieve the issue of crowding and shadows and reduced light and air, so that criterion was not satisfied. He said, related to the hardship, there had not really been any special conditions of the property identified with regard to the use variance, and that a lot of the discussion focused on the value and intent to preserve the old tree and move the garage over to where it was. He said that was all covered in the first go-around with the Board and agreed with, but it had no bearing on whether a use as a professional office was something that was appropriate for the property. He said therefore those hardship aspects of the property did not provide a rationale for allowing a non-allowed use of a professional office on the property. For those reasons, he said the variance request was not approvable. Mr. Sullivan concurred. He said adding the office space over the garage sort of expanded the envelope to the point where it burst. He said there was no way he could find that the application meets the unnecessary hardship test. He said the idea of proposing conditions to deal with perceived problems with the application was not a way to do that. He said conditions are not self-effectuating or enforcing and said people ten years from now would probably not know about the conditions, and even if they did, the City would have to bring a lawsuit against the property owner to make that condition actually work. He said placing a condition on the approval would not guarantee the things the property owner says will be true 5-10 years from now.

Chair Margeson asked Mr. Rossi if he accepted the additions from Mr. Sullivan. Mr. Rossi agreed

The **amended** motion was:

*Mr. Rossi moved to **deny** the variances for the petition as presented and advertised because the petition fails the criteria of the spirit of the ordinance, diminishes the values of the surrounding properties as a result of a higher structure and the impact on the nearby abutters, and the property has no hardship. There are no special conditions of the property that merit a use variance change.*

The motion to deny passed unanimously, 7-0.

- F.** 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)

SPEAKING TO THE PETITION [Timestamp 2:20:54]

The owners Martin and Lisa Ryan were present. Mr. Ryan said they wanted to subdivide the lot to support their current needs. He reviewed the nearby properties that did not meet the frontage requirements and said what was proposed was common for the neighborhood. He said they also wanted a driveway that entered from Thornton Street for the new lot. He said they would remove the existing garage and build a new one for existing home. He reviewed the criteria.

[Timestamp 2:29:55] Mr. Nies said it appeared from the Staff Memo and advertised variances that Mr. Ryan did not require relief from depth for Lot 1. Mr. Ryan said a clarification was made just before submitting the application and that the Planning Department told him he only needed the frontage relief. Ms. Casella agreed. Mr. Rheume asked what drove the 63-ft width proposed for the second lot. Mr. Ryan said it was the formula and the adjustments to get the proper open space and lot sizes and try to find an equal lot on each side while still having the ell-shaped drive-thru to the back. Mr. Rheume said the two driveways were proposed to side-by-side, and he asked if Mr. Ryan considered the turning radiuses for the proposed garage. Mr. Ryan said he factored in typical vehicles and thought there might be some minor adjustments made once they got into the technical side of it to accommodate the best use of the driveway and the vehicle turning radiuses.

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 2:36:03]

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

Mr. Nies said granting the variance would not be contrary to the public interest, would observe the spirit of the ordinance, and would not affect the health, safety and welfare of the neighborhood. He said the subdivision and the eventual construction of a new house on the second lot would have spacing similar to many other properties in the area and would have no effect on the light and air of the abutters. He said it would not alter the essential characteristics of the neighborhood, which was primarily a residential area. He said the applicant addressed the traffic safety concern by having Lot 1 and Lot 2 access from Thornton Street. He said substantial justice would be done because the applicant was requesting very minor relief only on the frontage of Lot 2. He said he saw no benefit to the public by denial that would outweigh the loss to the applicant. He said granting the variance would not diminish the values of surrounding properties, noting that no evidence was presented that it would. He said it would be hard to see how a well-constructed house on a lot that complies with

the ordinance, with the exception of street frontage, would diminish the values of surrounding properties. He said the property has a few special conditions, including that it is a large corner lot made from two separate lots originally, and the existing structure on one side is very near Thornton Street and creates a large open space to the left of the property, and the applicant is proposing to use that space to subdivide the lot and create a new buildable lot. Given those special conditions, he said there is no fair and substantial relationship between the ordinance's requirement to have 100 feet of street frontage and the specific application to the property. He said it is a reasonable use to use it as a single-family residence that would be built there as well. He noted that several properties in the area had less than 100 feet of frontage and a number of them had less than 63 feet of frontage. Vice-Chair Mattson concurred. He said the proposed application would result in something more in character with the neighborhood. He said after the lot is subdivided, there would still be enough square footage for each new lot, and the existing lot is somewhat regularly shaped, so it is almost surprising that all the other dimensional requirements are able to be met except for the frontage requirement. Mr. Nies said he found that acceptable. Mr. Rheume said he would support the motion. He said Woodbury Ave had a very rhythmic pattern to it, and the one discrepancy was the applicant's property that would be filled in to complete the look of the entire street.

The motion passed unanimously, 7-0.

III. NEW BUSINESS

- A. The request of **Dan Smith Management Group LLC (Owner)**, for property located at **407 The Hill, #6-16** whereas relief is needed to convert the ground floor to a residential use, which requires the following: 1) Variance from Section 10.642 to allow residential use on the ground floor in the Downtown Overlay District where it is not permitted. Said property is located on Assessor Map 118 Lot 26-4 and lies within Character District 4-L1 (CD4-L1) and the Historic District. (LU-26-56)

SPEAKING TO THE PETITION [Timestamp 2:41:39]

Attorney Philip Hastings was present on behalf of the applicant, with the owner Jeff Deuink. Attorney Hastings said the historic home in The Hill was originally built on Deer Street in 1761 and relocated in the late 1960s. He said The Hill properties were converted into condos in 2001 and the ground floors were not used for residential purposes. He said Mr. Deuink wanted to convert his ground floor to living space. He noted that it was historically used as a single-family residence. He explained why the unique setting and location of the property and its orientation did not make it conducive for first-floor commercial uses. He reviewed the criteria.

[Timestamp 2:49:17] Mr. Rheume said he did not see anything in the package stating that the condo association weighed in on whether they accepted the requested variance application. Attorney Hastings said the association's approval was not required and that they had not objected. Mr. Deuink verified that the condo members were aware of the application. Mr. Rheume asked if the current condo documentation spoke to business uses vs. residential uses for the various condo units. Mr. Deuink said it did not and that it was more of a governance of the properties. Mr. Nies asked what business was currently conducted on the first floor. Mr. Deuink said he owned the LLC that

owned the buildings and had other real estate holdings in the State. He said all the bookkeeping was done in the office. Mr. Nies said the current businesses on The Hill did not have a lot of traffic, and the property had no sign. Mr. Deuink said a person did the bookkeeping and there were no walk-in clients. Mr. Nies said the application made frequent reference to the highest and best use, and he asked how that related to the zoning ordinance. Attorney Hastings said it went to the criteria of public interest, spirit of the ordinance, and substantial justice standards. Mr. Nies asked if Attorney Hastings could explain the special conditions of the property that indicated hardship. Attorney Hastings referred to the site plan and said the house did not have frontage on a public street, had limited visibility, and was oriented so that the front door faced the rear of the building on Garden Way. He said the building's orientation was a unique condition that was not conducive to commercial uses on the first floor. Mr. Nies said it seemed like several of the properties had first-floor businesses and pedestrian access, and he asked how the applicant's property was different from those. Attorney Hastings said it was more obscured than many of the other properties. It was further discussed. Mr. Nies said he struggled with how the special conditions distinguished it from others on The Hill. Mr. Deuink explained that only two buildings, including his, did not have road or sidewalk access. Attorney Hastings said the ordinance's provision was for the entire Downtown Overlay District (DOD) and not just The Hill, and other properties in the DOD were similarly situated. Chair Margeson asked why the space could not continue to be an office space. Attorney Hastings said it could be but the question was whether the use proposed was reasonable.

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 3:02:51]

Mr. Rheume said he was conflicted because a good portion of the square footage was being used for nonbusiness uses and The Hill overall presented some challenges. He said the spaces were not well laid out for potential business uses, but several other homes had first-floor businesses. He said if The Hill was not suited more generally for first-floor commercial, he would like to hear from the condo association about which units in their association did not fit the pattern very well and which ones they were supportive of changing over to a completely residential use. He said he would rather see a bigger strategy rather than one or two members of the association coming forward. Mr. Nies said it was difficult to understand why it was included in the DOD to begin with, but the Board was stuck with the ordinance they had, which asked for first-floor businesses in that area, but the applicant made a strong argument as to why that should not be the case. It was further discussed. Chair Margeson said the applicant said he could still use the space as an office but also made a strong argument why the rule should not be applicable to his property. She said The Hill was a walkable place, with lots of hotels and restaurants nearby.

DECISION OF THE BOARD [Timestamp 3:10:35]

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

Vice-Chair Mattson said granting the variances would not be contrary to the public interest, and the spirit of the ordinance would be observed. He said the proposed use of a single-family home must not conflict with the explicit or implicit purpose of the ordinance. He said residential uses are allowed here, just not on the first floor, so the issue was with the Overlay District. He said it would not alter the essential character of the neighborhood or threaten the public's health, safety or welfare or injure public rights. He said the historic use of the structure and some of the other structures on the parcel had been residential in use, and in the neighborhood there were other residential uses including some single-family homes. He said substantial justice would be done because the benefit to the applicant would not be outweighed by harm to the general public or other individuals. He said it would be hard to claim that being allowed to use the ground floor as a residential use would be harmful to the general public, whereas there were benefits to the applicant to do so by expanding the current use. He said granting the variances would not diminish the values of surrounding properties, noting that there had not been a compelling case made either way, but it seemed reasonable that using this home as originally built as a residential use and allowing it to continue to do so would not diminish property values. He said literal enforcement of the provisions of the ordinance would result in unnecessary hardship. He said there were special conditions of the property that distinguished it from other properties in the area. He said there were the condos on The Hill and then the structure on the bigger property, so The Hill had homes that were relocated, and homes historically used as residential homes was a special condition that distinguished it from others in the area. He said there is no fair and substantial relationship between the provision of the ordinance and the specific application to the property. He said the issue was more the DOD, which for the sake of avoiding spot zoning needed to have some continuity. He said it made sense to activate the streetscape to avoid residential use on the ground floor and to have commercial use in the structures on the properties that face streets, but the applicant's structure was located in too much of a disadvantageous position on the parcel to be able to be used for commercial use. He said it would be a reasonable use and not inconsistent with the ordinance because other structures on the parcel still met the intent of the ordinance with the ground-floor commercial uses. Mr. Lucas concurred and had nothing to add.

Mr. Rossi said he would not support the motion. He said he did not think there was a true differentiation between the applicant's property and the others on The Hill. He likened it to chemistry and said the house was the seed that would crystalize the entire area of The Hill and defeat the purpose of having a walkable area that pedestrians can enjoy. Mr. Rheume said he also would not support the motion but could be persuaded if he had something from the condo association that agreed that the home had unique characteristics relative to the rest of The Hill and that the other condos would not be negatively impacted by what was proposed.

*The motion **failed** by a vote of 2-5, with Mr. Sullivan, Mr. Rossi, Mr. Rheume, Mr. Nies, and Chair Margeson voting in opposition.*

The motion was further discussed. Mr. Rheume said the Board should make the reasons for denial clear and come up with a different motion. Chair Margeson agreed.

The amended motion was:

*Mr. Sullivan moved to **deny** the petition based on the factual finding that the property has no special conditions that distinguish it from other properties on The Hill. He said the ordinance uses the term “area” and in his view, the area being discussed is The Hill. Mr. Rossi seconded the motion.*

Mr. Rossi said other properties similarly situated adjacent to the property had commercial space on the first floor. He said he walked through the area and noted that only one property had an “office for rent” sign and the others seemed to be occupied by commercial enterprises, therefore the nature of the property not being easily distinguished by other properties that are in close proximity to it meant that there is really not a justification of hardship that supports the use of a residential property there. Vice-Chair Mattson said he agreed with the motion, except that The Hill was a single property, so saying that it is not different enough from other structures on the same property is not how he understood the special conditions of the property being distinguishable from others in the area. Chair Margeson said she would support the motion because distinguishing it from other properties in the area and either restricting that to The Hill or to other properties in the DOD was a reasonable interpretation of that provision of the variance criteria.

*The motion to deny **failed** by a vote of 3-4, with Mr. Rheaume, Vice-Chair Mattson, Mr. Nies, and Mr. Lucas voting in opposition. (Four affirmative votes were needed for approval).*

The request was denied due to failure to receive a passing vote.

At this point in the meeting, Mr. Rheaume moved to suspend the 10:00 rule, seconded by Mr. Nies. The motion passed unanimously, 7-0.

- B.** The request of **Susan E Ingersoll (Owner)**, for property located at **46 Aldrich Road** whereas relief is needed to demolish the existing detached garage and construct a new attached garage which requires the following: 1) Variance from Section 10.521 to allow a 17.5 foot rear yard where 20 feet are required. Said property is located on Assessor Map 148 Lot 26 and lies within the General Residence A (GRA) and Historic Districts. (LU-26-65)

SPEAKING TO THE PETITION [Timestamp 3:27:22]

Project designer Justin Knowlton was present on behalf of the applicant. He said they proposed to construct a new attached garage and demolish the existing one. He noted that the new garage would be situated in a less nonconforming way. He reviewed the criteria.

[Timestamp 3:32:21] Mr. Rheaume verified that the small corner of the proposed garage was the only thing in the setback, and he asked why the applicant could not just cut a few feet further toward the road and eliminate the need for a variance. Mr. Knowlton said they wanted to keep the 24-ft depth of a garage, which was standard for a full-size vehicle and would allow room for a lawnmower since his client did not want a shed. He said if the garage were brought forward, the part of the house with a window would be impacted. Chair Margeson said the petition had to go before the Historic District Commission and the chosen materials might change because of that.

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 3:34:58]

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

Mr. Rheume said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said what was proposed was consistent with the neighborhood's characteristics. He said the applicant already had a small garage on the property that was more nonconforming and he wanted to create a garage that was a bit bigger but very modest and attached to the home. He said substantial justice would be done because the applicant wanted to keep a modernized functional single-car garage and have it attached to make it better for entry in the foul weather. He said granting the variance would not diminish the values of surrounding properties because the modest garage would be in almost the same location as before. He said what was unique about the property was the angled rear property line. He said the applicant would improve the nonconformity situation by reducing it. He said the window that could not be reasonably relocated was an existing characteristic of the home. He said the request was reasonable and that it would be a very small encroachment. Mr. Nies concurred and had nothing to add. Chair Margeson asked that a condition be placed in the motion stating that the materials may change as a result of the HDC review. Mr. Rheume and Mr. Nies agreed.

The **amended** motion was:

*Mr. Rheume moved to **grant** the variance for the petition as presented and advertised, noting that the materials may change as a result of the Historic District Commission's review but that it would not affect the fundamental characteristics of what the Board is approving. Mr. Nies seconded the motion.*

The motion passed unanimously, 7-0.

- C. The request of **Debra M Dupont (Owner)**, for property located at **911 Sagamore Avenue** whereas relief is needed to demolish the existing sunroom and construct an addition which requires the following: 1) Variance from Section 10.531 to allow a 13 foot rear yard where 20 feet are required; and 2) Variance from Section 10.334 to allow the existing single family residential use (Use #1.10) to be extended to another part of the remainder of the land. Said property is located on Assessor Map 223 Lot 33 and lies within the Waterfront Business (WB) District. (LU-26-71)

Mr. Rossi recused himself from the petition.

SPEAKING TO THE PETITION [Timestamp 3:41:06]

Attorney Monica Kaiser was present on behalf of the applicant, with her clients Shawn and Debra Dupont. She said the sunroom was really an existing deck that was previously rudimentarily enclosed and that they wanted to formally enclose that deck. She said it would have the same footprint and the stairs would be relocated to the back. She said the property was in an enclave in the Waterfront Business District and had a small residence that included the small sunroom. She said the work would not be within the various setbacks. She reviewed the criteria.

The Board had no comments. 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 3:47:53]

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

Mr. Nies said it was a small request for relatively minor relief from the zoning ordinance to modify a deck that was close to encroaching on the setback. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said there was no indication that the small change would affect the health, safety, and welfare of the neighborhood or public or have any effect on light and air. He said it would not alter the essential characteristics of the neighborhood. He said it was a Waterfront Business District use but most of the properties were already residential and it would not change that residential use. He said it would do substantial justice, noting that he could not identify any benefit to the public by denial that would outweigh the loss to the applicant. He said it would not diminish the values of surrounding properties because the change would not be visible to hardly anyone except the applicant, and there was no evidence presented by the abutters or anyone else that they were concerned about the value of their properties diminishing. He said there were a few special conditions, including that it was an existing longstanding single-family residence in the Waterfront Business District, and the lot was burdened by the fact that much of it is covered by the wetland buffer. He said a portion of the building encroached on the setback for the rear yard, but because of the waterfront buffer and other conditions of the property, there really was no alternative location for providing a similar benefit to the applicant of a small deck located outside the house that could be put on any other part of the property. Owing to those special conditions, he said there is no fair and substantial relationship between the purposes of the ordinance, i.e. the setback requirement, and its specific application to the property. He said the proposed use is reasonable and would not really change the property. Mr. Rheume concurred. He said the hardship criteria is reasonable. He said the expansion was really adding one season's worth of use and a few square feet of additional space. He said it is a

longstanding nonconformance and the applicant would just add a season's use of one small portion of the structure to the additional nonconformance.

The motion passed unanimously, 6-0, with Mr. Rossi recused.

- D.** The request of **1010 US Route 1 Bypass LLC (Owner)**, for property located at **1010 Route 1 Bypass** whereas relief is needed for a canopy sign which requires the following: 1) Variance from Section 10.1251.20 for a 95 sq. ft. canopy sign where 20 sq. ft. is allowed; and 2) Variance from Section 10.1241 for an animated sign where it is not allowed. Said property is located on Assessor Map 141 Lot 19 and lies within the Business (B) District. (LU-26-75)

SPEAKING TO THE PETITION [Timestamp 3:52:55]

Grant Michael of NH Signs was present on behalf of the applicant. He said the applicant did not have useful signage on the property because the few small signs they had were difficult to see from the Route One Bypass. He said a large portion of their business was for trucks and large vehicles. He said they wanted to put the signs on a canopy because there was not a good spot on the property for a freestanding sign due to height limitation, and a truck could hit a sign on the road. He said the animated signs were more altering than animated and had a cash/credit wording that toggled every 10 seconds. He said there were two canopies on the property. He reviewed the criteria.

[Timestamp 4:00:00] Mr. Rossi asked if the entire gas and diesel pricing sign was illuminated or if was just the pricing. Mr. Michael said it was just the pricing. Mr. Rossi asked if the animation and illumination applied to the entire 95 square feet or if the Board would be approving a more limited area for the illumination. Ms. Casella said the 95 square feet was for both the animated and nonanimated areas. She said if the sign would need to be defined if it was altered. Mr. Nies asked if the prices was the only thing that changed. Mr. Michael said only the credit and cash would change. He said the sign would give a cash price and then it would change to credit. Ms. Casella suggested placing a condition on the motion or clarifying the issue in the motion. Mr. Rheame asked if the fuel price signs could be set to not toggle. Mr. Michael agreed. Mr. Rheame asked how tall the canopy was. Mr. Michael said the canopy clearance was 15 feet for the trucks, so 15 feet would be the base and 18 feet would be the top off the pavement.

Chair Margeson opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

No one spoke.

SPEAKING IN OPPOSITION TO THE PETITION [Timestamp 4:05:09]

Rubin Lee of One Kane Street said he and his neighbors went before various boards about issues with the former owner of the truck stop that ranged from glaring light, excessive noise, and diesel

fumes, and those issues still existed. He said the requested signage was five times larger than allowed and would be visible from his and his neighbors' properties and disruptive to their right to enjoy their properties. He said the addition of animation would exacerbate it. He said the current owner ran the business for 12 years and saw no need to erect a large sign to attract more customer.

Kira Kimic of 23 Kane Street said her home was in the direct sightline of the property. She said even dim light before bedtime caused melatonin in children to plummet and included depression and increased cancer risks, and her daughter's bedroom faced the sign. She said the ordinance prohibits animated canopy signs in that district and the sign would affect property values. She said if approved, it would set a precedent for every business on the Route 1 Bypass.

Margaret O'Donnell of 149B Dennett Street said she was speaking on behalf of her daughter, Keira O'Brien of 71 Prospect Street. She said her property abutted the Route 1 Bypass and truck stop and the animated sign would shine into the upstairs bedrooms.

Kyle Engle said he owned the property at 149 Dennett Street that had a direct view of the canopy. He asked if the portion of the sign that says "gas and diesel" would be illuminated, and if not, he asked how it would be illuminated and what the purpose was.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Grant Michael said the vinyl gas and diesel signs were not illuminated and would not shine light. He said the prices were not like a spotlight but just look illuminated when someone looked at them. He said a 75-sf freestanding sign was allowed. He said his client could put up a sign that was completely illuminated and would not be on the canopy. He noted that two gas stations down the road already had toggles that alternated pricing.

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

DECISION OF THE BOARD [Timestamp 4:22:09]

Mr. Rheaume suggested splitting the two variance requests and just addressing the first of the two.

*Mr. Rheaume moved to **grant** the first variance from Section 10.125.20 for a 95-ft canopy sign where 20 square feet is allowed, with the following **condition**:*

- 1. The maximum amount that shall be illuminated out of the 95 square feet is 30 square feet.*

Vice-Chair Mattson seconded.

Mr. Rheaume said Sign District 4 was based on the long history of the Route 1 Bypass, and during that time, there were all kinds of gas stations so there was a sort of legacy. He said the Board was judging the application by what Sign District 4 allows. He said the applicant would be allowed by

right to have a 100-sf freestanding sign that could be entirely illuminated and placed anywhere on the property and most likely closer to the neighborhoods. He said the applicant made strong arguments relating to the parcel and that it was reasonable to have a balance between what the owner's right to effectively demonstrate the product that he was legally allowed to have and what was proposed. He said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said it had to do specifically with the parcel being in Sign District 4 and what was allowed there. He said the Route 1 Bypass had a long history of having those types of uses on it, and there was residential abutting up against the business but it was a longstanding business. He said the request did not change the area's fundamental characteristics, especially of the Route 1 Bypass Corridor. He said the applicant noted that there were other signs further down the road of various heights, sizes, and illuminations, and in general, more illuminated and taller than what was being asked for. He said a freestanding sign could be up to 20 feet high, which was taller than what the applicant proposed, and it could be fully illuminated, so he thought the proposal was consistent with what was being done along the business corridor. He said substantial justice would be done because the canopy would be taller but below the maximum height of a freestanding sign, and there was a longstanding use of the property providing fuel services specifically for trucks, which required a certain clearance, and there was also an existing structure there, so the balance weighed in favor of the applicant. He said granting the variance would not diminish the values of surrounding properties. He said, looking at what was allowed for relief relative to the Sign District and what is allowed in the Sign District relative to overall characteristics, there are always pros and cons with any signage or light source's placement. He said what the applicant was asking for was sufficiently simple enough that it would not negatively impact property values in a general sense. He said the unique hardship the property had was its historic development as a truck stop. He said trying to position a freestanding sign with trucks coming in would be negative to the surrounding neighbors as well as negatively impactful to the vehicles taking advantage of the existing structure that has been there for many years. He said it was reasonable that the applicant was asking for a minimal amount of illumination and that the first variance and its condition should be approved. Vice-Chair Mattson concurred. He said it seemed like a lot of the neighbors' concerns were more about issues of lights and other existing conditions, like the trucks idling and floodlights, which was different than the type of illumination the applicant was asking for. He said the LED lights projected more straightforwardly and did not have the same effect. He said the long and narrow property was unique because it was by the Route 1 Bypass offramp, which gave it a bit of a buffer. Chair Margeson said she would not support the motion due to procedural issues. She said she did not like breaking up variance applications. She said it may be problematic because she did not know if the animated sign closely related to the first variance. She said she did not think the applicant had a hardship and believed that there was another way the applicant could do what they wanted to do.

*The motion **failed** by a vote of 3-4, with Mr. Sullivan, Mr. Rossi, Mr. Nies, and Chair Margeson voting in opposition.*

*Mr. Nies moved to **deny** both variances as presented and advertised, seconded by Mr. Rossi, based on the criteria below.*

Mr. Nies said granting the variances would be contrary to the public interest due to the residential neighborhood near the applicant's property. He said granting a variance for an animated sign larger than allowed by the ordinance would affect the health, safety and welfare of the neighbors and would also affect their property values. He said he did not think that it was consistent with the spirit of the ordinance. He said the ordinance went through great detail on signs and he had not heard a strong argument as to why they should be changed in this case. He said he was not convinced that granting the variances would diminish the values of surrounding properties because the Board did not have any definitive specification of that, and it was unclear to him that literal enforcement of the ordinance would result in an unnecessary hardship. He said he was not sure that the property really had special conditions that distinguished it from others in the area because it was a filling and service station on the highway. He said several stations in that area all had the same layout and the challenge of getting their prices out, so he was not convinced that special conditions had been identified in a clear enough way that there was a strong unnecessary hardship that would lead the Board to believe that there is no fair and substantial relationship between the purposes of the ordinance and its specific application to the property. He said the variance application was contrary to the public interest, violated the spirit of the ordinance, and did not meet the hardship criteria. Mr. Rossi said he wanted to reinforce the notion of failure to meet the hardship criterion. He said there were several filling stations on both sides of the Route 1 Bypass and none of them had canopy signs. He said the only instance he was aware of where the Board approved an illuminated canopy sign was on Portsmouth Avenue at the Sunoco station, which was in a very industrialized area and not anywhere near a residential district. He said the applicant's station was close to a residential district, so the hardship criterion needed extra scrutiny. He said he drove on the Route 1 Bypass and often to find the lowest priced diesel in the area, and he never had any difficulty. He said he did not think there was any special aspect of the property that supported the variances as they have been written. Mr. Rheume said he would support the motion primarily because of the second variance, which he thought should be denied.

*The motion to deny **passed** by a vote of 6-1, with Vice-Chair Mattson voting in opposition.*

- E. The request of **500 Maplewood Avenue LLC (Owner)**, for property located at **500 Maplewood Avenue** whereas relief is needed for a canopy sign which requires the following: 1) Variance from Section 10.1251.20 for a 95 sq. ft. canopy sign where 20 sq. ft. is allowed; and 2) Variance from Section 10.1241 for an animated sign where it is not allowed. Said property is located on Assessor Map 142 Lot 34 and lies within the Business (B) District. (LU-26-74)

SPEAKING TO THE PETITION [Timestamp 4:44:12]

Grant Michael of NH Signs was present on behalf of the owner and said he wanted to withdraw the application. Chair Margeson read the rule into the record and said Mr. Michael was allowed to request a withdrawal.

DECISION

The applicant **withdrew** the petition.

F. REQUEST TO POSTPONE The request of **Madison Commercial Group (Owner)**, for property located at **72 Mirona Road** whereas relief is needed to establish a 5,049 square foot Pilates/exercise studio which requires the following: 1) Special Exception from Section 10.440 Use #4.42 to allow a 5,049 square foot health club, yoga studio, or similar use where more than 2,000 square feet are allowed by Special Exception. Said property is located on Assessor Map 253 Lot 3 and lies within the Gateway Center (G2) District.
REQUEST TO POSTPONE (LU-26-76)

DECISION OF THE BOARD

*Mr. Rossi moved to **postpone** the petition to the July 21st meeting, seconded by Mr. Rheaume. The motion passed unanimously, 7-0.*

G. The request of **Prescott Family Revocable Trust (Owner)**, for property located at **306 South Street** whereas relief is needed to build a chicken coop and have chickens, which requires the following: 1) Special Exception from Section 10.440 Use #17.20 to allow the keeping of farm animals where it is allowed by Special Exception. Said property is located on Assessor Map 253 Lot 3 and lies within the Single Residence B (SRB) and Historic Districts. (LU-26-64)

SPEAKING TO THE PETITION [Timestamp 4:47:18]

The owner Matt Prescott was present and said he wanted a special exception to keep a small flock of eight hens primarily as pets in his backyard. He reviewed the criteria.

[Timestamp 4:49:19] Mr. Nies verified that there would be a total of eight chickens. He asked what the coop's square footage would be. Mr. Prescott said it would be 30 square feet. Mr. Sullivan verified that it would be all hens and no roosters. Mr. Prescott said all the abutters approved.

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 4:50:56]

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

- 1. There shall be a maximum of eight laying hens, and no roosters.*

Vice-Chair Mattson seconded the motion.

Mr. Nies said the Staff Memo made a reference to the applicant not needing a building permit. Ms. Casella said it came from the fact that variances are usually vested and a building permit is not required. She said it could be mentioned in the motion that a building permit is not required.

The **amended** motion was:

*Mr. Rheume moved to **grant** the variance for the petition as presented and advertised, and the special exception is vested without issuance of a building permit because it is not needed for the construction of the chicken coop. The following **condition** applies:*

- 1. There shall be a maximum of eight laying hens, and no roosters.*

Vice-Chair Mattson seconded the motion.

Mr. Rheume said it was a special exception in that zone and would pose no hazard to the public or adjacent public on account of potential fire, explosion, or release of toxic materials. He said it would pose no detriment to property values in the vicinity or change in the essential characteristics of any area because the coop would be small. He said it would not affect other structures, parking areas, passageways, odor, smoke, gas, dust, noise, or heat. He said noise could be an issue but the Board's stipulation stated that there would be no roosters, which were usually the noisiest. He said there would be no creation of a traffic safety hazard or a substantial increase in the level of traffic congestion because the keeping of chickens would not have nothing to do with that. He said there would be no excessive demand on municipal services including water, sewer, waste disposal, police and fire protection, and schools. He said water, sewer and waste disposal could be issues but the Board's stipulation was for a maximum of eight chickens and those issues were minor compared to the other routine demands of a residential use. He said there would be no substantial increase in stormwater runoff onto adjacent properties or streets because the size and location of the coop would not result in that. Vice-Chair Mattson concurred and had nothing to add.

The motion passed unanimously, 7-0.

IV. ADJOURNMENT

The meeting adjourned at 11:55 p.m.

Submitted,
Joann Breault
BOA Minutes Taker