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

7:00 P.M. **October 27, 2026**

MEMBERS PRESENT: Beth Margeson, Chair; Jeffrey Mattson, Vice Chair; David Rheaume; John Holzman; Thomas Rossi; Thomas Nies; and Robert Sullivan

MEMBERS EXCUSED: Mike Lucas, Alternate

ALSO PRESENT: Jillian Harris, Planning Department

Chair Margeson called the meeting to order at 7:00 pm.

I. OLD BUSINESS

A. Request for Rehearing – 28 Blossom Street [Timestamp 4:18]

Mr. Rossi explained why he felt there was no error of procedural law or unreasonable application of facts made by the Board. He said the rehearing request took the same line of discussion as the original appeal that was heard in September, which was a claim that the Code Official treated a new zoning use within a zone where it is not allowed. He said the rehearing request restates that and provides additional color as to how the Code Official reached the decision. He said the building code is designed to apply appropriate architectural and engineering standards to a structure so that it can be used safely, whereas the zoning ordinance contemplates specific uses in specific zones. He said some of the things implied in the request for rehearing indicated that the requestors feel that what is being allowed is the use of the space as a dwelling unit, co-living arrangement, or boarding, where it is not allowed in that zone. He said the zoning ordinance has specific definitions of those things, which he described, and said none of the recommendations to the Code Official would have those features incorporated into the room, therefore it did not constitute a use that is allowed in that zone. He said the new information was more about how the Code Official reached his recommendations based on the building codes. He said he did not think that shed any light on the matter before the Board and within their jurisdiction to apply. Mr. Holzman said he reviewed the tape and read all the information and thought the Board should have a rehearing because the decision that was made was too narrow. Mr. Sullivan said there was overlapping and constant back-and-forth through the whole case of the building code and zoning-related issues brought up by the applicant. He said he did not doubt the accuracy of Mr. Wolf's conclusion but thought it did not address the zoning issue that the applicant raised. He noted that the standard for rehearing required the ZBA to find good reason for a rehearing. He said the Board's decision was really based on the building code analysis provided by Mr. Wolf, and he felt that the Board may not have really answered the question that was raised in the application. He said he was in favor of the rehearing.

Mr. Rheaume said additional information was provided that was significant and worth looking at again. Mr. Nies said the Board's written decision accurately reflected the motion that the Board passed, but it focused strictly on the building code issue and did not address the overlapping zoning issues. He said a rehearing would give the Board an opportunity to not only consider whether there was any new information that might affect their ruling but would also clarify the final decision and address the zoning issue one way or the other. Vice-Chair Mattson explained why he did not think a rehearing was needed but said he would not be opposed to one. Chair Margeson said she was not in favor of a rehearing because she did not think the Board made any error of law either in procedure or substance. She said the Board's purview was the zoning ordinance and whether the room was a dwelling unit, and all the evidence produced at the hearing indicated that it was not a dwelling unit. She said the transient or non-transient sleeping unit is not defined in the zoning ordinance, and there were concerns that it would come dangerously close to being a boarding house.

DECISION OF THE BOARD [Timestamp 23:04]

Mr. Sullivan moved to grant the rehearing, seconded by Mr. Holzman.

Mr. Sullivan said the discussion presented a good reason to have a rehearing. Mr. Holzman concurred and said he felt that the Board's previous decision was too narrow.

The motion passed by a vote of 4-3, with Vice-Chair Mattson, Mr. Rossi, and Chair Margeson voting in opposition.

II. NEW BUSINESS [Timestamp 24:48]

Chair Margeson recused herself, and Vice-Chair Mattson was Acting Chair.

A. The request of **Emilyn Anne** and **Eben Kennedy (Owners)**, for property located at **1490 Islington Street** whereas relief is needed for construction of an addition and renovation of a single-family residence with an accessory dwelling unit to a two-family residence, which requires the following: 1) Variance from Section 10.440 to allow a two-family dwelling in the SRB District. Said property is located on Assessor Map 233 Lot 108 and lies within the Single Residence B (SRB) District. (LU-26-126)

SPEAKING TO THE PETITION [Timestamp 25:30]

The owner Emilyn Kennedy said she wanted to build a modest addition to provide a bedroom for the first-floor unit and resolve a situation created by the configuration of the home and the City's installed cross signal. She said the previous owner got a permit to configure the house as a single-family one with an ADU, and it identified the first floor as an ADU to satisfy the City's requirement of 750 sf. She said the problem was that the first floor unit did not have a private bedroom and the existing window faced the crosswalk. She said the proposed new bedroom would increase the property's square footage for an ADU under the guidelines, so she wanted the property classified and used as a two-family dwelling. She reviewed the criteria.

[Timestamp 32:40] Mr. Rheaume asked how much of the plan layout was already constructed. Ms. Kennedy said there was a new kitchen and bath in the 2nd floor unit and the bedrooms were

repainted. She said no reconfiguration was done on the first floor. Mr. Rheaume asked if the front entryway would be the access point for the 2nd floor unit. Ms. Kennedy agreed. Mr. Rheaume said the floor plan for the first floor as reconfigured showed an open layout for the porch at the end of Islington Street. Ms. Kennedy said that was the current configuration for the first floor with the proposed bedroom and no changes were required. Mr. Rheaume asked what the gross living area on the second floor would be if it were not for the entryway. Ms. Kennedy said she did not have that calculation. Mr. Rheaume asked if there was any possibility it could be designed as an ADU that would meet the City's requirements. Ms. Kennedy said it was her primary residence and that she had no intention to sell. Mr. Rheaume said another option would have been to request a variance for the gross living area of an ADU and explain why she needed 875 square feet, seeing that the State allowed up to 950 square feet. Ms. Kennedy said she wasn't sure if there was a precedent for that but then found other multiple properties in the neighborhood that were changed to two- and three-family condos or apartments. Acting Chair Mattson asked if Ms. Kennedy considered reallocating the first floor entryway to the first-floor apartment. She said she had but there would be no entryway to the second-floor unit.

SPEAKING IN FAVOR OF THE PETITION [Timestamp 44:06]

Richard Rash of 1507 Islington St said he was the abutter across the street. He said he had seen the property decline and thought it was nice to see it being improved.

Jim Lee of 520 Sagamore Ave said the property is burdened by the pedestrian signal with a big flashing yellow light going off for 30 seconds with loud beeps in front of the bedroom, which was not good. He said the project would enhance the values of the nearby properties.

SPEAKING IN OPPOSITION TO THE PETITION

No one spoke.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Rick Becksted of 1395 Islington St said he lived four doors down from the property in a duplex. He said there was another duplex in the area as well as a 3-apartment building, so the proposal would not change the neighborhood. He said the proposal was something that should be looked at more closely by the Planning Department and the City Council because it offered an opportunity to change the regulations on housing and help solve the housing crisis in New Hampshire.

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

DISCUSSION OF THE BOARD [Timestamp 48:42]

Mr. Rheaume said the Board had seen and denied some requests for 4-units and 3-units as well as other requests for subdivisions, but he did not know if the properties on the street that were

duplexes were granted relief by the Board. He said the applicant's property abuts a garden apartment/mobile home property on the back, but it was a large sea of SRB. He said the applicant said their lot is larger than most of the other lots. He said the ADU made a lot of sense and that he would be more comfortable approving it as an oversized ADU. He said the variance runs with the land, and if the applicant moved and sold it to someone else, that person could take advantage of the variances and potentially make the structure condos. He said it was advertised as a two-family dwelling, so that made it more difficult. Possible stipulations were discussed.

DECISION OF THE BOARD [Timestamp 59:34]

Mr. Rossi moved to grant the variances for the application as presented and advertised, seconded by Mr. Sullivan.

Mr. Rossi said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. Regarding single or multiple dwelling units, he said it was primarily to control the density of development in the zone, but the application would not change that because it was already being utilized as a two-family unit and would remain that way. He said substantial justice would be done because denying the application would be a loss to the applicant. He said he agreed with the rationale of not having a bedroom by the crosswalk and thought the bedroom would be more logically situated in the back of the unit, which would not cost the public anything. He said granting the variances would not diminish the values of surrounding properties because no change was proposed that would do so. He said literal enforcement of the ordinance would result in substantial hardship because the lot was a very oversized one for the zone and it was not a case where the structure is proposed to be knocked down and replaced by a substantially different new one. He said it would be a use of an existing structure that is consistent with the common practice in the area and the fact that there were other duplexes. He said, saying that this particular lot would not support a duplex when there are others in the immediate area that do not affect the character of the neighborhood is a misapplication of the zoning ordinance in a way that is not suitable for the property. He said the other condition was the proximity to the crosswalk, which was an annoyance for the way the first floor is laid out. Mr. Sullivan concurred and said the applicant stated her case very well and was well supplemented by Mr. Becksted. Mr. Rheaume said he would not support the motion because the action being taken did not provide the same protections for SRB zones as ADUs. Mr. Nies said he would support it but clarified that the Board was granting a variance and not rezoning. Mr. Holzman said he would not support it for the same reasons as Mr. Rheaume.

The motion passed by a vote of 4-2, with Mr. Holzman and Mr. Rheaume voting in opposition.

Chair Margeson resumed her seat, and Acting Chair Mattson resumed his seat as Vice-Chair.

B. The request of **Nathan Alger (Owner)**, for property located at **104 Thornton Street** whereas relief is needed to demolish an existing carport and deck and construct an addition; and to permit after-the-fact installation of a fence, which requires the following: 1) 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; 2) Variance from Section 10.521 to a) allow a 4' rear yard setback where 20' is required, b) allow a 6’ secondary front yard setback where 15’ is required, c) to allow 44.5% building coverage where 25% is allowed; and 3) Variance from Section 10.515.13 to allow a fence exceeding 4' in height with a 0' front yard setback where 15' is required. Said property is located on Assessor Map 160 Lot 11 and lies within the General Residence A (GRA) District. (LU-26-120)

SPEAKING TO THE PETITION [Timestamp 1:07:42]

Attorney Derek Durbin was present with the owner Nathan Alger via Zoom, architect Rob Harbeson, and engineer Patrick Crimmins. He said the property was a small corner lot that had a Thornton St address but the driveway was on Sparhawk St, so that was treated as the front. He said the carport and deck were in disrepair and the property suffered from a degree of deferred maintenance. He said the owner’s family expanded and he wanted to reconfigure the floor plan, add a one-car garage with living space above, and replace the rear deck with a sunroom and living space above it. He said both additions would be built in the same footprint as the carport and deck, except for a small increase in coverage of 77 sf. He said there would also be a small decrease in the rear yard setback of 1.3 ft to accommodate the garage. Mr. Harbeson said the owner needed a primary suite with a bathroom. He said the garage would have a minimal width and they would try to get the basement access back after getting rid of the bulkhead. Mr. Nies said it seemed that the lot boundaries were set back considerably far from the road due to the way the terrain slopes down. Attorney Durbin said the boundaries were set back at least 10 feet. Attorney Durbin explained why they applied for an after-the-fact variance for the fence. He said the residents at 29 Sparhawk St emailed a letter of support, which he gave to the Board. He reviewed the criteria.

[Timestamp 1:23:16] Mr. Rheaume confirmed that the two different options for the second floor were the same in terms of the footprint. He said the house would end up being twice the size and the carport would turn into a garage with a full second story on top that would be four feet from the property line. He asked how it would be maintained. Mr. Harbeson said there would be plenty of room to maintain it. Mr. Rheaume said the applicant was taking advantage of using the additional square footage and that the wall of the second floor will match the wall of the first floor. Mr. Harbeson agreed and said it was the professional standard for a minimum width of a one-car garage. Mr. Rheaume asked what the linear length of the fence for the secondary front yard was. Attorney Durbin said the fence ran off the left side of the house. Mr. Rheaume said the applicant’s property line ran closer to the fence but the Board did not know its dimensions. Attorney Durbin said the fence was at least 10 feet off the pavement. The fence was further discussed.

Chair Margeson opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke. Chair Margeson closed the public hearing.

DISCUSSION OF THE BOARD [Timestamp 1:35:30]

Mr. Nies said he was normally skeptical about fences in the front yard, but in this case it was the principal front yard and a 6-ft high fence. He said the ground from the road sloped down to the fence, so the fence did not appear as daunting as it would otherwise. He said he could support it. Chair Margeson said she had a lot of concerns about the application due to the size of the addition where the carport was and how close it was to the side yard, and the bulking of the structure of the lot. Mr. Rheaume agreed. He said four feet was tight and would be right up against the neighbor's property and that it was too much of an ask. He said the fence was set back far enough that it would not cause an issue. Mr. Rossi and Mr. Sullivan agreed that it was too much for the lot.

DECISION OF THE BOARD [Timestamp 1:42:45]

Mr. Rossi moved to deny the application as presented and advertised, seconded by Mr. Rheaume.

Mr. Rossi said the application would not meet the first two criteria of not being contrary to the public interest and observing the spirit of the ordinance. He said the spirit of the ordinance was to prevent overcrowding, particularly having structures abutting up against other ones on adjacent properties. Mr. Rheaume said he thought the criteria of not being contrary to the public interest and the hardship were not met. Regarding special conditions of the property, he said a corner lot was not really driving the issue. He said there was an existing but not substantial structure, so that did not contribute to the uniqueness of the property relative to others in the zone. He said the lot was small but he did not think that the applicant made a strong-enough argument that other similar additions came along that required the additional room to the side property line. He said the property did not have enough unique conditions to say there was something special about it relative to others in the zone and should be granted the level of relief being asked for, with a two-story addition at four feet back from the property line. Vice-Chair Mattson said the fence variance was also a part of the application and asked if it should be considered separately. Chair Margeson explained why it should not. Mr. Rossi said he saw no need to include specific mention of the fence.

Mr. Rheaume withdrew his seconding of the motion by Mr. Rossi.

*The **amended** motion was: Mr. Rossi moved to deny the application because it failed the first two criteria of not being contrary to the public interest and observing the spirit of the ordinance and the hardship criteria. Mr. Sullivan seconded. The motion passed by a vote of 4-3, with Mr. Rheaume, Vice-Chair Mattson, and Mr. Nies voting in opposition.*

C. The request of **Schofield-Kanner Revocable Trust (Owners),** and **Cain Investments, LLC (Applicant)**, for property located at **0 Woodworth Avenue** whereas relief is needed to construct a new single-family residence on a vacant lot, which requires the following: 1) Variance from Section 10.521 to allow a) lot area of 3,440 SF where 15,000 SF is required, b) lot area per dwelling unit of 3,440 SF where 15,000 SF is required, c) 40 feet of contiguous street frontage where 100 feet is required, d) lot depth of 86 feet where 100 feet

is required, e) a front yard setback of 17 feet where 30 feet is required, f) a rear yard setback of 10 feet where 30 feet is required, and g) a building coverage of 35% where 20% is allowed. Said property is located on Assessor Map 232 Lot 73 and lies within the Single Residence B (SRB) District. (LU-26-125)

SPEAKING TO THE PETITION [Timestamp 1:50:05]

Attorney Derek Durbin was present on behalf of the applicant Paul Cain. He said the vacant lot was created in 1902 as a subdivision plan and was nonconforming with respect to area frontage and depth. He said the building envelope was only 520 sf and that a narrow 3-bedroom, 2-bath home was proposed to accommodate it. He noted that the actual coverage request was 34.6 percent and included a proposed bulkhead with 2 feet of relief from the rear setback. He reviewed the criteria. He addressed the Fisher v. Dover issue and said there was an attempt at one time to reconfigure lot lines that would have rendered two lots nonconforming, but it was denied. He said the application was different because it related to the existing nonconforming lot.

[Timestamp 2:02:17] Vice-Chair Mattson said there was a note about the rear yard setback being 8 ft vs. 10 ft and he asked if there were issues with how that was advertised. Ms. Harris said it was advertised for 10 feet, but the application was updated after the deadline to reflect 8 feet for a bulkhead. She said it could be postponed for proper notice. Attorney Durbin further explained why it was revised and said that the amended variance request could be removed and the bulkhead designed so that it did not require the extra 2 feet. Mr. Rossi said Lot 232-77 was very similar. Attorney Durbin said that lot was not encumbered by wetlands so it had a lot of similar dimensions. He said that lot and Lot 243-21 were the only two undeveloped lots of a similar configuration in the area that were not encumbered by wetlands or owned by the City. Mr. Rheaume asked if Attorney Durbin had a comparison for two other small lots as to the footprint and lot coverage for the structures. Attorney Durbin said Lots 59 and 70 exceed the 20 percent building coverage. Mr. Holzman asked where the current owner got the information from 2009 if the City did not have a record of it. Attorney Durbin said he got it through someone who researched the City files some time ago. Chair Margeson asked what the other egress out of the basement was. Mr. Cain explained that the bulkhead would have to be reconfigured vertically and that it would be lower than the 18 inches.

Chair Margeson opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

No one spoke.

SPEAKING IN OPPOSITION TO THE PETITION [Timestamp 2:14:20]

Rich Duddy of 56 Swett Ave told the Board that the former owners of the property tried to subdivide it twice and were denied. He said the applicant was asking for seven variances to build a very large house on a very tiny lot and that he did not want to look at it from his front window. He

gave examples of small homes in the neighborhood and said the applicant had enough land to build something comparable but that he wanted to maximize the lot for profit.
Mary Pirrung of 59 Swett Ave asked why there was not a photo shown of the actual lot the applicant wanted to build on. She said two of the photos were of her property. Chair Margeson said the photos just showed the elevations. Ms. Pirrung said the proposed house was too large for the lot.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Attorney Durbin said the floor plan is slightly under 2,300 finished square feet, which was needed for modern living space and storage.

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

DISCUSSION OF THE BOARD [Timestamp 2:30:40]

Mr. Rheaume said the applicant's representative summarized the situation best by admitting that they were trying to develop a house from the 2020s onto a lot designed in the early 1900s. He said there was a significant incompatibility between those two things. He said making any kind of buildable lot would be a struggle, but the relief asked was creating yet another layer of nonconformity in trying to make it into what the applicant was looking for in a lot. He said the configuration asked for was too much. Vice-Chair Mattson said a lot of variances were requested but the lot is quite small. He said the lot should be allowed to have some type of home on it and he thought fewer variances could be asked for, but without some form of relief, the lot would never be allowed to be built on. Mr. Rossi said the proposed home was a far cry from the Sears catalog homes that the lots were intended for, but it was contemporary in terms of what a house should look like. He said he did not think it was out of character with the neighborhood and did not believe that the Board should consider the lot a non-developable one. He said the applicant's approach was reasonable and that he would support it. Mr. Holzman said there was room for a house on the lot but not the size proposed. Chair Margeson said if the Board did not give reasonable relief, it could be considered a taking because the lot is a lawful nonconforming one. She said she thought the proposed structure was too big and that a different application would have required not as much relief from the front yard and rear yard setbacks and building coverage. Mr. Nies said his main concern was that the rear yard setback was too close. Mr. Rheaume said parsing the application would not be helpful because additional relief would be needed for any proposed structure.

DECISION OF THE BOARD [Timestamp 2:40:46]

Mr. Rossi moved to grant the lot area, lot area per dwelling unit, the frontage, and the depth variances (variances 1a through 1d). Mr. Nies seconded.

Mr. Rossi said granting the four variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said there is no public interest in restricting the use of the lot as a buildable lot. He said substantial justice would be done because the loss to the applicant by not

being able to build on the lot would outweigh any gain to the public by not having additional housing made available. He said granting the four variances would not diminish the values of surrounding properties, noting that the Board had not heard anyone say that there was a fundamental problem with building there but there were just issues with other aspects of the application that were not included in Variances 1a through 1d. He said literal enforcement of the ordinance would result in unnecessary hardship because there was no way to cure the lot of its deficiencies with regard to lot area, lot area per dwelling unit, the frontage, and the depth. He said the lot is what it is and is not consistent with the zoning that was developed long after the lot was laid out, and there is no way to make use of it other than granting the four variances. Mr. Nies concurred and had nothing to add. Mr. Sullivan said it was a bad idea to go in that direction because if the motion passed, the Board would have approved something that has not been requested and it would leave dangling a fresh application that no one has thought about. He said it would create an almost impossible situation for the Planning Department going forward when they got the next application. He also noted that the meetings were running late enough without the Board dissecting every application to see what little part they could approve. He said he would vote against the motion. It was further discussed. Vice-Chair Mattson said he appreciated Mr. Sullivan's comments and said if the four variances were approved, the applicant could proceed without coming before the Board again, but it could complicate things for the Planning Department. Mr. Rossi said he did not see a complication for the Planning Department and that he was trying to convey that the property owner could proceed and come back with an alternative proposal. He said there were economic consequences for delaying decisions. Mr. Rheaume said in that case, he would not support the motion because the level of relief to make something realistically palatable to the owner is not consequential enough for the Board to take on this decision at this time. He said the Board would need to see the whole project. Mr. Nies said he seconded the motion but would probably vote against it now because the Board could conceivably approve the right project. Chair Margeson said she would not support the motion because she agreed with Mr. Sullivan.

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

[Timestamp 2:49:59] *Vice-Chair Mattson moved to deny the entire application as presented and advertised, seconded by Mr. Rheaume.*

Vice-Chair Mattson said the application failed the first two criteria. He said the applicant was asking for a lot of relief and that some of it was due to the land, but the relief for the front yard and rear yard setbacks and building coverage would conflict with the purpose of the ordinance and would be contrary to the public interest in terms of crowding, air, light, and privacy. He said the spirit of the ordinance would not be observed because the project could alter the essential characteristics of the neighborhood and how the zoning is being applied. He said there were a few comparable properties in the area, but some of the bigger homes were on bigger lots, so a good-sized home like the applicant's was not demonstrated in the neighborhood.

The motion to deny passed with all in favor, 7-0.

D. The request of **Peters Family Trust (Owner)**, for property located at **54 Lincoln Avenue** whereas relief is needed to construct a second-floor accessory dwelling unit over an existing detached garage, which requires the following: 1) Variance from Section 10.521 to allow a) a rear yard setback of 10 feet where 20 feet is required; and b) building coverage of 29% where 25% is allowed. Said property is located on Assessor Map 111 Lot 21 and lies within the General Residence A (GRA) District. (LU-26-124)

SPEAKING TO THE PETITION [Timestamp 2:54:21]

Project contractor Jeff Dyer was present on behalf of the owner. He said they wanted to place an ADU above the 2-car garage and that the only horizontal setback relief they needed was the egress to get out of the ADU. He said the design would match the existing home and the egress would be on the right side of the house so that the parking space was not lost. He reviewed the criteria.

[Timestamp 3:01:16] Mr. Nies said the applicant would need less relief if he put the egress on the left side of the garage instead. Mr. Dyer said the left side of the property was near a City-owned park and the space was small.

Chair Margeson opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke. Chair Margeson closed the public hearing.

DECISION OF THE BOARD [Timestamp 3:03:35]

Mr. Rheaume moved to grant the variances for the application as presented and advertised, seconded by Mr. Sullivan.

Mr. Rheaume verified that the application is a two percent increase in lot coverage driven solely by a set of stairs, and the encroachment on the rear property line is a vertical expansion of an existing one-story garage to a second story but is modest in size. He said the amount of square footage in the setback area is small and the property is abutted by a City park on one side and a deep lot that is unlikely to be developed on the other side. He said the chosen location for the stairs would be the least visible to the abutters. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said the additional relief requested is minimal in a form of a set of stairs and not a major structure. In terms of visual characteristics to the neighborhood, he said the applicant selected the least impactful location. He said substantial justice would be done because there was nothing in the public's purview that would outweigh the applicant's ability to make better use of the garage space by adding a second floor and turning it into an ADU, which would be more housing for a potential renter or family member and would be one less housing unit needed in the City, so that was a positive public benefit. He said the location of the stairs on the back of the property would not impede the public's view of the park. He said granting the variances would not diminish the values of surrounding properties because there was

nothing in the modest vertical expansion that would do so, and adding an ADU would probably increase the value of the applicant's property and surrounding ones. He said literal enforcement of the ordinance would result in an unnecessary hardship due to the property's special conditions of being abutted by public open land and a deep lot that probably would not be fully developed. He said the use was reasonable because it would expand a fully approved use by adding a modest second story to an existing garage and not increasing the garage's footprint. Mr. Sullivan concurred.

The motion passed with all in favor, 7-0.

***Note**: At this point in the meeting, Mr. Nies moved to go past 10:00, seconded by Mr. Rheaume. The motion passed with all in favor, 7-0.*

E. The request of **Michael** and **Stephanie Febonio (Owners)**, for property located at **9 Sheafe Street** whereas relief is needed to construct an 8-foot fence which requires the following: 1) Variance from Section 10.515.13 to allow an 8-foot fence in the secondary front yard. Said property is located on Assessor Map 107 Lot 13 and lies within Character District 4 (CD4) and the Historic District. (LU-26-123)

SPEAKING TO THE PETITION [Timestamp 3:09:53]

The applicant Michael Febonio said he wanted to replace a fence in the back with an 8-ft fence but that he would accept having a 6-ft fence with a 1-ft lattice on the top. He said his backyard was on Custom House Lane and there were 8'8" between the garage and the neighbor's property line, so the fence would be about 24 feet long. He said he wanted to enclose his yard for his animals and for privacy and security reasons. He said Custom House Lane was really a one-lane street used for parking and access to the commercial businesses for trash delivery and so on. He said he had issues with trash blowing in his yard, drug paraphernalia, and people smoking outside the area who tried to pet his dogs. He reviewed the criteria.

[Timestamp 3:19:52] Mr. Rheaume confirmed with Ms. Harris that the current 8-ft fence was allowed by right per the ordinance, so it was really the 8'8" long section in the front yard portion that the applicant needed relief for. He asked Mr. Febonio if he would include a gate with the fence, and Mr. Febonio agreed and said it would look like a solid fence across the back. Mr. Sullivan asked about a letter from the Sweeney and Sweeney Law Firm indicating that the applicant would not allow his neighbor on his property. Mr. Febonio said it had nothing to do with his application.

Chair Margeson opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

No one spoke.

SPEAKING IN OPPOSITION TO THE PETITION

Chair Margeson said the Board had letters from the abutters but that they did object to the fence.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD [Timestamp 3:24:33]

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

Mr. Nies said Sheafe Street is normally the front yard and Custom House Lane marks the boundary for the rear yard, but the applicant's thru lot was more unusual than most of the thru lots the Board had seen because Custom House Lane seemed to function more as an alley than a street. He said granting the variance will not be contrary to the public interest and will observe the spirit of the ordinance; it will not affect the health, safety, and welfare of the neighborhood in an adverse way; it will have no effect on light and air; and will not alter the essential character of the neighborhood. He said a lot of the buildings on the street extend all the way to the street line, and the fact that the Board did not like fences on front yards because they create a wall was irrelevant because there were already walls on the street that extend all the way to the street. He said substantial justice would be done because he could not see any benefit to the public by denial that would outweigh the loss to the applicant, and denying the variance would not allow the applicant the security he needs due to the activities that take place on Custom House Lane. He said granting the variance will not diminish the value of surrounding properties, noting that no evidence was presented that it would and no abutters expressed concerns about the fence affecting their properties. He said there were 6-to-6-1/2 foot fences on other nearby properties and the property values were not diminishing in those areas due to the fences. He said the property was unusual because it was officially a thru lot, but someone could only get to the back by going through the house. He said many of the properties extend all the way to the lot line on Custom House Lane. He said the applicant's yard is narrow and the relief for the fence will provide security for the yard. He said the fence is higher than what the Board usually approves but is a short stretch that is next to a garage that goes all the way to the property line on one side. He said he did not believe that there is a fair and substantial relationship between the purpose of the ordinance and its specific application to the property. Vice-Chair Mattson said normally he was hesitant to approve such a tall fence, but the applicant's scenario was special. He said the main issue was that Custom House Lane was really a dead-end back alley and not representative of a typical street frontage, so there was not much of a pedestrian experience and if anything, the pedestrians back there were doing undesirable activities.

The motion passed with all in favor, 7-0.

F. The request of **325 Corporate Drive II LLC C/O The Kane Company (Owners)**, for property located at **325 Corporate Drive** whereas relief is needed to install two wall signs and monument signage, which requires the following: 1) Variance from Section 306.01(d)

of the Pease Development Ordinance to allow signs to exceed the 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 318 Lot 2 and lies within the Airport Business Commercial (ABC) District. (LU-26-122)

SPEAKING TO THE PETITION [Timestamp 3:30:25]

Property Manager Titus Cramer was present on behalf of the Kane Company. He said the site had a monument sign a little over 100 sf seen from Corporate Drive. He said the way each side of the sign was calculated counted toward the aggregate area. He said two of the building's tenants wanted to install signage on the building for additional wayfinding and identify. He reviewed the criteria.

[Timestamp 3:35:17] Mr. Holzman asked if having both sides of the monument sign go to the aggregate was an interpretation the applicant had gotten in the past or was just logical. Mr. Cramer said that was the way Pease looked at it.

Chair Margeson opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke. Chair Margeson closed the public hearing.

DECISION OF THE BOARD [Timestamp 3:37:11]

Mr. Rheaume moved to recommend approval of the requested variance to the Pease Development Authority (PDA) Board. Mr. Holzman seconded.

Mr. Rheaume said the request would have no adverse effect on or diminution in the value of surrounding properties because the corner lot is somewhat separated from some of the other businesses and is a unique location in the Pease complex. He said the monument signage is minimal overall, which is a key factor, and the other signs that are wall signs that Pease proposes adding a substantial amount to the overall square footage are more hidden, so he did not see how any of the surrounding properties would be negatively impacted. He said granting the variance would be a benefit to the public interest because it will provide improved wayfinding, and the monument sign out front would still be modest. He said that, once someone sees that first initial wayfinding sign, going along will help reassure them and give them a sense of where in the building they need to go. He said denial of the variance would result in unnecessary hardship to the person seeking it. He said the lot had an exceptional amount of frontage penalizing them, understanding that there is a 200 sf cap with that, and in this case, that seems egregious relative to what the applicant should normally be allowed to have. He said granting the variance would do substantial justice and would weigh in the applicant's favor. He said the public would get what they need in terms of wayfinding and the applicant can take advantage of the remainder of the signage once they're on the lot. He said the proposed use will not be contrary to the spirit of the zoning rule. He said it caps this amount of signage at 200 sf, which is a tight cap, and the intent is to have the signage along the roadside be

very modest. He said the additional signage will not be apparent until someone gets onto the property site. Relative to what would be by the rest of the criteria of 2 sf per foot of linear footage, he said the 300 sf request is very modest. He said the Board should recommend approval.

Mr. Holzman concurred and had nothing to add. The motion passed with all in favor, 7-0.

G. The request of **Rocket Too Trust (Owner)**, for property located at **10 Merrimac Street** whereas relief is needed to reconstruct a porte-cochere which requires the following: 1) Variance from Section 10.521 to allow a) a rear yard setback of 10 feet where 20 feet is required; and b) building coverage of 26% where 25% is allowed. Said property is located on Assessor Map 129 Lot 17 and lies within the General Residence A (GRA) District. (LU-26-128)

SPEAKING TO THE PETITION [Timestamp 3:41:16]

Keri Marshall was present on behalf of the Rocket Too Trust and said they wanted to replace the porte-cochere that was removed by the previous owner without permits. She said they filed a request to have the National Park Service put the property into the National Historic Register. She showed photos of what the porte-cochere looked like in the past and said they were just asking to replace what was improperly removed. She reviewed the criteria.

[Timestamp 3:47:25] Mr. Rossi asked what the benefit to the Rocket Too Trust would be for getting the property on the National Historic Register. Ms. Marshall said there were significant financial considerations that they would get some credits for from the National Park Service. In response to Mr. Rheaume's questions, Ms. Marshall said the property line ran up the driveway of the neighboring apartment building, and some of the driveway was on that property. She said they also removed the outdoor egress from the third floor. Mr. Nies asked if the porte-cochere would be wide open on three of the four sides, and Ms. Marshall agreed.

Chair Margeson opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke. Chair Margeson closed the public hearing.

DECISION OF THE BOARD [Timestamp 3:50:03]

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

Mr. Rossi said granting the variance will not be contrary to the public interest and will observe the spirit of the ordinance. He said the primary difference is the rear yard setback and the change in building coverage is de minimis, as is the rear yard setback. He said the spirit of the ordinance with regard to setbacks would be preserved because the porte-cochere is an open structure that does not

infringe upon light, air, and circulation around surrounding properties. He said substantial justice will be done because there is a quantifiable and quantified loss to the applicant if they did not get the changes approved so that they can get their house registered with the National Park Service and get some renumeration for the investment they put into preserving the property. He said there is no gain to the public by denying the variance that would outweigh the substantial benefit to the property owner. He said granting the variance would not diminish the values of surrounding properties because the project would restore the property to what it once was, which would only enhance the neighborhood and the values of surrounding properties. He said literal enforcement of the ordinance will result in an unnecessary hardship, noting that the unique aspects of the property are its historic nature and the fact that what is being proposed is a restoration and repair of damage to an historic structure that should never have occurred. Mr. Nies concurred and had nothing to add.

The motion passed with all in favor, 7-0.

Chair Margeson said Member Mr. Lucas resigned because he moved to Chicago, so there were two openings for alternate members and two openings for regular members. She said she would ask the Board at the December meeting to consider recommending eliminating the Board's review of Pease Development Authority (PDA) applications as well as issues with the ABC Buildings.

IV. ADJOURNMENT

The meeting adjourned at 10:55 pm.

Submitted,
Joann Breault
BOA Meeting Minutes Taker