

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

**7:00 P.M.**

**March 17, 2026**

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

**MEMBERS EXCUSED:** None.

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

---

**I. APPROVAL OF MINUTES**

**A.** Approval of the **February 18, 2026** meeting minutes.

*Mr. Rossi moved to **approve** the February 18 minutes as amended, seconded by Mr. Rheame.*

Mr. Rossi asked that the word “access” on page 14 of the minutes be changed to “axis”. The sentence now reads: “He said what is unique about the property is that the lot itself is somewhat of an irregular-shaped one where the front lot line and rear lot line don’t run in a parallel direction and the house itself is not oriented on the same axis as the rear line, so the part of the new structure that intrudes on the rear yard setback is really a point and not the entire broad side of the structure.”

*The motion **passed** unanimously, 7-0, with Mr. Nies abstaining.*

**II. OLD BUSINESS**

Mr. Rheame recused himself from the following petition, and Alternate Mr. Lucas took a voting seat.

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

**SPEAKING TO THE PETITION** [Video timestamp 13:55]

Attorney Derek Durbin was present on behalf of the applicant Chinburg Development, along with Shawn Tobey of Haley Ward and Shawna Sammis and Alex Monterosso of Chinburg Development. Attorney Durbin reviewed the petition and explained how they proposed to merge the two properties, raise the existing buildings, and build three Colonial single-family dwellings.

[Timestamp 17:34] Mr. Nies asked how high the retaining wall near Unit 3 was. Mr. Tobey said they graded it out and that it would now be a 6-inch curb. Mr. Nies asked how high the steps at the back of Units 1 and 2 were. Attorney Durbin said they were under 18 inches above the average grade. Mr. Mannle asked what the ownership status for the three single-family homes would be. Attorney Durbin said they would be under the same owner once the lots were merged and would be condominiums. Attorney Durbin then reviewed the criteria and said they would be met. Chair Margeson asked Ms. Casella to describe the view corridor. Ms. Casella read Section 10.5842.40 of the ordinance regarding the North Mill Pond public view corridors: "All new buildings or structures located within 400 feet of the North Mill Pond shall be located in such a way as to maintain existing public views with a terminal vista of the North Mill Pond with the intersecting streets of Dover St, Cabot St, Cornwall St, and Langdon St. Except for existing obstructions, the public view shall be maintained for a minimum width of the existing public right-of-way of the nearest intersecting street as listed above." Chair Margeson concluded that anything that exists now is fine but it cannot be expanded. Mr. Nies asked whether what appeared to be a side yard for Unit 3 would not be allowed to have a fence over four feet at the end of the Cornwall St Extension to protect the view. Ms. Casella agreed and said that, according to the definition of structure, it includes fences over four feet in height.

Chair Margeson opened the public hearing.

**SPEAKING IN FAVOR OF THE PETITION** [Timestamp 23:58]

Geraldine Gaeta of 91 Langdon St said she was an abutter on two sides and thought the design of the condos was beautiful and would be an improvement over what was currently there.

Elizabeth Bratter of 159 McDonough Street said the new design would include the Cornwall St view corridor, which benefitted many in the neighborhood. She noted that the proposed condos were similar to ones that already existed on Langdon Street. She said the 88 feet of frontage existed for years and that keeping it would have little or no impact on the neighborhood. She said the lot was much longer than wider on the frontage side and allowed for three homes with lots of space between them. She said values of surrounding properties would not be diminished and that adding much-needed single-family homes with great views would only increase values. She said the applicant could have had a much larger commercial space but chose not to. She asked the Board to approve the project and to ask the developer to consider adding a door to face Langdon St to continue the front steps motif of Islington Creek.

**SPEAKING IN OPPOSITION TO THE PETITION**

No one spoke.

**SPEAKING TO, FOR, OR AGAINST THE PETITION [Timestamp 28:00]**

David Rheume of 81 Langdon Street noted that Section 6 Paragraph 14 of the BOA Rules and Regulations indicated that a Board member may only speak when recused and if they were a direct abutter, which he was. He said he was neither for or against the petition. He said Chinburg Development reached out to some of the most affected abutters, including himself, and that the abutters had the opportunity to provide feedback that was mostly positive. He said making it a residential area instead of a business one would be a positive for the neighborhood and would also reflect the changes that were happening in the neighborhood. He noted that the parcel was one of the last remaining ones in the MRB district. He said he was disappointed that there was no use of the end of Cornwall St to provide access to the parcels. He said the applicant's explanation was that the City determined that Cornwall St may not have been an accepted street and therefore could not be used as an access point, particularly for Buildings 2 and 3, which then placed their driveways coming out onto Langdon St. He said it was something that the neighbors were continuing to research. He said older City maps showed homes on that portion of Cornwall St and Cornwall St extending to the railroad tracks. He said he found the City's decision curious but that it was satisfactory for the purposes of the Board if they chose to approve the requested relief. He said it was also an issue that could be addressed through the site plan review process. He said the view corridors were an interesting aspect to the zoning ordinance that came out of the 105 Bartlett St project due to a lot of concerns with establishing very tall projects that would impact those view corridors for the neighborhood. He said the project took that into consideration.

Chair Margeson said there was a question from one of the members about the status of Cornwall Street. Ms. Casella said Cornwall St is not maintained by the City or built to City standards, so for that reason it does not count as frontage. Chair Margeson said that would affect the access to it as part of the applicant's project. Ms. Casella said she would have to research it more. Mr. Sullivan said it would be difficult to determine the status of a historical street such as this one that was created prior to the area of having a Planning Board that approved such things and one that would unlikely have a deed or direct dedication to the City and later accepted by the City. He said it was a historical question that really could not be answered unless someone had done all the research.

Elizabeth Bratter of 159 McDonough Street said Cornwall St was called a paper street but in the 35 years that she lived there, part of the street was plowed by the City. She said there were City parking spaces on that street that were enforced by the neighborhood parking program. She said people were told that they could park on McDonough Street because it was a public area. She said it was not really a paper street until it got beyond the property where Regan Electric was.

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

**DECISION OF THE BOARD** [Timestamp 34:24]

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

Mr. Nies said it is a commercial area right now that is not very attractive or well developed and has a lot of asphalt as well as a few buildings on it. He said the proposal would result in improvements to the area and will turn what is a commercial/industrial area into more of a residential neighborhood. He noted that residences are allowed in the MRB zone. He said the design preserves the view corridors and meets all the required setbacks and leaves plenty of light and space. He said granting the variance would not be contrary to the public interest and would not affect the health, safety, and welfare of the neighborhood. He said the design was a well thought-out one that preserves the view corridors and that the buildings as spaced will not restrict light and air. He said the project was residential in nature and would improve the essential characteristics of the neighborhood. He said granting the variance will observe the spirit of the ordinance for the same reasons, as well as the use changing to residential. He said substantial justice would be done because the developer will benefit from the conversion into three residences, but if it were to be denied, there would be no benefit to the general public 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 anyone was concerned that it would and that granting the variance would if anything likely improve the values of surrounding properties. He said it was a request for a modest variance in street frontage of 12 feet. He said the special conditions were that one lot having access to a street would be combined with a lot that has limited street frontage. He said the street frontage issue cannot be rectified due to the locations of the lots and the railroad. He said the purpose of street frontage was largely to prevent crowding, and the way the project was proposed meets the goal of the ordinance in not providing crowding. He noted that there was also a railroad track on one side, so there really was no issue with the fact that the street frontage is less than desired, which would lead to crowding. He said owing to those special conditions, there is no fair and substantial relationship between the purposes of the ordinance and enforcing the street frontage requirement to this specific property. Mr. Mannle concurred and had nothing to add. Mr. Sullivan said it was not even a close case and that he could not find any way that the application did not meet the criteria.

Chair Margeson asked if the Board wanted to include a stipulation about Cornwell Street and they said they did not. Chair Margeson said she would support the application because it did more to bring the property into compliance with the purposes of the ordinance.

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

Mr. Rheume returned to his voting seat for the following petition. Chair Margeson recused herself, and Vice-Chair Mattson took the Acting Chair seat. Alternate Mr. Lucas took a voting seat.

- B.** The request of **Chase Home for Children C/O Woodman (Owners)**, for property located at **698 Middle Road** whereas relief is needed to construct a new facility on the property which requires the following: 1) Variance from Section 10.334 to allow the residential care facility use to be extended to another part of the remainder of the land, 2) Variance from Section 10.440 to allow for the construction of a new residential care facility structure. Said property is located on Assessor Map 232 Lot 45 and lies within the Single Residence B (SRB) District. (LU-25-167)

#### **SPEAKING TO THE PETITION** [Timestamp 40:28]

Attorney Derek Durbin was present on half of the Chase Home for Children. He asked for 10 extra minutes for his presentation.

*Mr. Rheume moved to grant the applicant a total of 25 minutes to speak, considering the complex nature of the application. Mr. Nies seconded. The motion **passed unanimously**, 7-0.*

Attorney Durbin introduced Executive Director of the Chase Home for Children, Mimi Wheeler, Shawn Tobey of Haley Ward, and project architect Mark Pelletier. He said several trustees were also present, including architect Lisa DeStefano. Attorney Durbin said the property was one of the largest in Portsmouth and surrounded by several different zoning districts. He said a significant portion of the property consisted of a wetland buffer and that the only developable part of the property was the existing developed part of the area closest to Middle Road. He reviewed the history of the Chase Home and said that after 109 years, the building had outlived its useful life and failed to meet the needs of the organization and residents, so a new and more functional building was needed to provide the same level of services. He said they had two design meetings and site walks and numerous one-on-one meetings with abutters and neighbors for public input which resulted in significant changes in design, mass, and so on that minimized the impact that the proposed new building would have on the area. Ms. Wheeler reviewed the background of the Chase Home and the programs they ran, the largest of which was residential treatment services for children who have trauma. She said there were 34 staff members and that the facility was open 24 hours. She described the living spaces for the residents and said the building had a poor layout and an aging infrastructure. She said the new building was the only option that would be in the best interest of the residents and that would not disrupt their care. She said the bedrooms would decrease from 22 to 20 and that staffing would remain the same. Project architect Mark Pelletier said he had been involved with the project for over two years. He said he was asked to evaluate whether the existing building supported the Chase Home's mission and found that it did not, due to significant renovation challenges. He said any upgrades would trigger code compliance and require major structural renovations and high costs. He described the existing building's interior and its problems. He said to prevent the children from living through a major renovation, they proposed a new building that increased the square footage to 31,500 sf. He said a large portion of the new building was on the upland portion of the site and constrained by a wetland and buffers, and they tried to minimize the building's visual impact and increase the setback from the neighbors.

[Timestamp 1:03:30] Attorney Durbin reviewed the criteria. He said the new building would be larger by about 9,000 sf but the impact would remain the same. He said a conforming 10-lot residential subdivision would have a much greater impact in terms of daily traffic in and out of the building and the overall intensity of use. He said substantial justice would be done because there was no feasible way to upgrade the property. He said surrounding property values would not be diminished, noting that he submitted a report from Brian White, a licensed appraiser in the area, who said it would not result in a diminution of abutting property values nor change the characteristics of the neighborhood. He said the property had special conditions that included being a historical vested nonconforming use of a property as a residential care facility that predated current zoning. He said the only developable area was closer to Middle Road and surrounded by a mix of different uses and zoning districts.

[Timestamp 1:09:29] Mr. Rheume said it was stated that demolishing the existing structure for a new one was something that was not desirable. He asked if anything was looked at in terms of providing temporary accommodation for the services, like temporary encampments, during the renovation of the existing building. Attorney Durbin said there was not, given the background of the residents, many of which had suffered trauma in their lives. He said that placing them into an environment like that would be detrimental to their well-being. Mr. Rheume asked whether an alternate site was considered to use as a temporary one. Attorney Durbin said every option was explored and that the proposed one made the most sense. Mr. Rheume said the widest section of the property had a portion in its center that was not either in the wetlands or the buffer and was separated by the rest of the property by a wetlands area. He said the Board had seen other developers who allowed access across the wetlands area to a buildable area, like the one off Banfield Road. He asked if that was considered and if so, why it was not viewed as something that could work. Attorney Durbin said everything had been considered. In terms of the isolated pockets of upland, he said there was one area in the middle of the property that would require crossing wetlands. He said that was not a desirable or viable option and that it would have a huge wetland disturbance impact. Mr. Tobey said significant grade changes were made in that pocket and other areas. He said it would cause significant road construction, culverts, and so on and that the existing grades would still slope. He said it would be a cost constraint and would have an impact on wildlife. He said the team felt that the best location would be right off the existing structure. Mr. Rheume said the applicant's application about potential property values did not appear to change. He asked if anything had changed from last December. Attorney Durbin said no. Mr. Rheume asked what the plan was for the existing building and whether anything happened in the past few months regarding the vision for that building. Attorney Durbin said nothing had happened and that it was difficult to save it. He said there was hope in the future that the building could be adapted and reused and would likely be reconstructed in that footprint. He said there was no guarantee that it would come to the City's attention and could require further zoning relief. He said it was better to identify and plan around it than not to, but he did not believe that the building was likely to be saved. Mr. Nies said there was a suggestion in the application that the ultimate plan was to either rebuild or tear the building down and put in a new building. He said with the addition of the parking requirements based on 42 beds, he was having a difficult time reconciling what was being proposed. He said the applicant stated that the intensity of use would remain the same, but he asked how the

applicant could make that argument if they went up to more than 40 beds. Attorney Durbin said that was the maximum intensity if the building were to be reconstructed in the future and that it was more for transparency purposes. He said what was proposed was the proposed building and that the applicant was not asking relief for the existing building. He said there would not be 42 beds in this proposal. Mr. Nies said the site plan showed parking based on 42 beds, and he asked if the applicant planned on building that parking now. Attorney Durbin said it was not determined yet but thought it would be better to build that parking. He said a consultant told them that 13 cars are parked on the property daily. He said if parking had to be reduced, however, it could be. Mr. Nies said one of those lots was close to a house on Sylvester Street. He asked what the plan for lighting was. Attorney Durbin said everything would have to be dark-sky compliant and would not shine on abutting properties. Mr. Nies referred to the appraisal report and said a comparison was made to a number of properties. He asked how close the residential properties were made to that development, noting that some were within 64 feet up to 100 feet.

[Timestamp 1:20:50] Brian White, owner/operator of White Appraisal of Dover, said the Durham Riverwood property was a large one on Route 128. He said he did not measure the distances from the building to the nearest residence but knew it would be farther away from what was proposed for the applicant's development. He said the two Dover properties were more in built-up residential areas and that the distance would probably be 50-100 feet in some instances but that he did not measure them. Mr. Mannle asked if City Staff or the Conservation Commission was approached about accessing the large parcel of buildable land in the back of the property. Attorney Durbin said he wasn't aware of it. Mr. Sullivan asked if the applicant felt that if the variances requested were granted, the applicant would be able to continue the use of the existing building as a matter of right. Attorney Durbin said no, that it would come under the City's purview should anything be proposed with respect to that building if it were to be demolished. Mr. Sullivan said therefore the current building would be empty if the residents moved into the new building. Mr. Rossi said in the assessment of potential impact on surrounding property values, several phone calls were placed to various places up and down the Seacoast. He asked if Mr. White spoke to the Portsmouth City Tax Assessor to find out if there would be a reduction in the assessment of the surrounding properties. Mr. White said he talked to an assistant who indicated that hypothetical did not come up and that the concentration was more on whether there had been any diminution of value identified with the existing property and its use and any plans for tax abatement. Mr. Rossi asked if Mr. White specifically asked, with regard to the proposed new structure, whether the more immediately abutting properties would be expected to see a reduction in their tax assessed values. Mr. White said he may have asked that and that he often did but that every assessor had the same answer. He said they only dealt with facts based on sales. Mr. Rossi asked if that data was included in Mr. White's report. Mr. White said it was not but that it was online. Mr. Rossi concluded that there was no reduction in value as a result of these facilities being built. Mr. White agreed.

Acting Chair Mattson opened the public hearing.

**SPEAKING IN FAVOR OF THE PETITION** [Timestamp 1:28:39]

Lisa DeStefano of 153 Lafayette Rd and 23 High Street said she had done many projects but none meant more to her than the applicant's. She said she served on the Board of Trustees for nearly 10 years and witnessed the dedication and compassion that the Board showed the children of the Chase Home. She said the facility did not meet any building codes and that the space was never designed to support the level of need for the young people who came in every day. She asked the Board to allow the facility to be located on the parcel, saying that it was an investment not just in the building but in the future of the City's most vulnerable youth.

Jason Corkum of 726 Middle Street said he lived at the Chase Home in the 1980s and early 90s and was grateful to be a productive member of the community. He said he learned a lot of integrity and got a lot of moral support. He said the Chase Home was important to deter homelessness, addiction, and so on and that it brightened up the kids' lives.

### **SPEAKING IN OPPOSITION TO THE PETITION [Timestamp 1:34:27]**

Attorney Krista Gennell with Lyons Law Offices said she represented Taylor Power and Rosalie Andrews of 1 Sylvester Street, direct abutters of the Chase Home. She said the application to expand a nonconforming use must be denied, noting that NH law stated that a nonconforming use shall not be expanded and zoning ordinance 10.331 prohibited it. She said the applicant did not apply for a variance from Section 10.331 because it prohibited granting the variance. She said the proposed building was 9,000 sf more and the location would be upland and visible from Middle Rd and Sylvester Street. She said the 13 parking spaces would be increased to 34 or 42 and that the woodland area would be eliminated. She said sidewalks, three roof decks, a storage shed, and exterior lighting were proposed, which would be a new institutional campus.

Paul Roggenbuck of 2 Sylvester Street said he bought his home in April 2024 and that three of the homes on the street were sold within the last two years. He said everyone had been selling their homes and getting out. He said the appraisal might be right but people would not buy properties there. He said currently the hill filling was changing the profile of the valley and that there were stormwater effects. He said the parking and increase in transportation would also be impacts. He said the proposed size seemed strange and that it would be more of a mixed use of expanded office, training, and residential spaces. He said it was hard to believe that dark-sky lighting would be placed on a parking lot built up to 15 feet.

Becky McBeath of 243 Middle Road said the applicant was asking for two variances that would significantly impact the neighborhood and the City. She said it was unreasonable to consider the Chase Home's 1951 mission as the same unlawful nonconforming use suggested today. She asked the Board to deny the variance based on the fact that the applicant was asking for approval to be a residential care facility, which was not the status in the past.

Rosalie Andrews of 1 Sylvester Street said her home directly abutted the project. She said the plan was flat and did not have a good grasp of the side yard, which was the setback from Chase Home to her home. She said the new building would begin at 15 feet up compared to where her house was,

which was not a continuation of the existing use but was a substantial enlargement and intensification of the use. She said the zoning ordinance did not allow nonconforming uses to evolve into something fundamentally larger and more intrusive. She said the building would evolve into a large institutional complex visible from Middle and Sylvester Roads and would not be consistent with the area's residential character. She said the applicant had not decided what to do with the existing building.

Liza Hewitt of 726 Middle Rd (via Zoom) said she abutted the Chase Home. She said the project would not meet two of the criteria, the literal enforcement of the ordinance resulting in unnecessary hardship and surrounding properties not being diminished. She said it was not true that the 100-ft wetland buffer encumbered a significant portion of the land and that the only remaining development of the area was where the new building was proposed because the area abutting the front of the current building was dry and buildable. She said there was also a one-acre cleaned up area behind the building. She said there were also two dry paper roads to the middle of that property. She said there was no hardship. She said surrounding property values would be diminished because the new building was proposed to be only 125 feet from Middle Road. She said it would look more like a giant medical office park in a neighborhood of 100-year-old New Englanders. She said four local realtors attested to the diminution of the surrounding homes. She said Mr. White was a commercial appraiser and that none of the properties he used as comparisons was in Portsmouth.

Taylor Powell of 1 Sylvester Street said the project would negatively affect her property's value. She said she asked Mimi Wheeler why the new building could not be in the front of the existing one and was told that they did not want to overshadow the current building. She said that new building would overshadow her property, though.

#### **SPEAKING TO, FOR, OR AGAINST THE PETITION [Timestamp 2:04:53]**

Attorney Durbin said there was a technical issue raised that they had not applied for relief from Section 10.331 but that it was referenced in the applicant's materials. He said they initially did apply for that as well as a variance from Section 10.334 but City Staff determined that 10.331 was not needed because it was encompassed within the variance for 10.334. He said a variance from Section 10.440 was probably not needed because it was a residential care facility use of the property, which already exists. He said they applied for it in case it was needed. He said regarding whether it was a residential care facility use, it had been treated that way historically by the City. He said the new building could not be constructed immediately in front or behind the existing building because it would disrupt the infrastructure of the property and there was a wetland buffer in back. He said the issue of the law of nonconforming uses was erroneous because his client applied for the proper relief using the proper avenue of a variance process.

#### **Second Time Speakers**

Attorney Krista Gennell referred to Attorney Durbin's reference to Section 10.331 and said it was intentionally omitted to not apply for that variance because they would not get it. She said it was clearly an expansion of a nonconforming use in a residential district. She said four Portsmouth real estate professionals concluded that the expansion would diminish the values of surrounding properties. She said Mr. White's format was prepared for the client and not intended for third-party reliance and that there was no quantitative methodology used. She said Mr. White's comparisons were all adult senior care facilities and that he never visited or inspected any of the abutting properties. She said he acknowledged that there could be potential buyers of surrounding properties that would prefer not to be in the area of the new Chase Home but said the group would not be large enough to negatively impact market values, which contradicted experts who said otherwise.

Becky McBeath of 243 Middle Road said she spoke with Chris Reese in the Commercial Appraiser's Department who said the data was decided based on sales and not diminution of value of surrounding homes. She said the comparison properties were located next to highways or there were no nearby residential properties.

Liza Hewitt via Zoom said the placement of the proposed new building, given the overall size of 26 acres, was a hard pill to swallow. She asked the Board to carefully consider the wetlands map and imagine a 31,000-sf building next to their home or in their single-family neighborhood.

Brian White said his charge was to see if he could find data that could prove a diminution of value and looking for comparables in the New Hampshire market. He said he started by interviewing the assessors and looking at the most comparable properties he could find and that he looked at the ones nearest to Portsmouth. He said he found no data that indicated a diminution of property values.

Becky McBeath said the property was on a high slope, and she explained how green space played an important part in the neighborhood.

Attorney Krista Gennell said no one disputed the mission of the Chase Home, but a 31,000-sf building with two new parking lots, deforestation, and so on in a single-home residential district is not a modest continuation of an existing use.

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

#### **DISCUSSION OF THE BOARD [Timestamp 2:35:46]**

Mr. Rheume said the Chase Home's mission was important but not a factor the Board was considering. He said what the Chase Home wanted to do with their property was a completely different thing than what they might provide for the community and society. He said the applicant made a good argument that the current facility is not meeting their needs and that it was up to them if they wanted to remedy that, but it was for the Board to figure out if what the applicant was asking for is acceptable or not. He said the parcel is massive and left over from a large farm in the mid-1800s. He said much of the land was sold off since then, but the applicant's large parcel remained

and was zoned as a single residence parcel. He said if it was zoned as Gateway One, the use would be allowed by special exception, but based off the information the applicant provided, the Planning Board said it fell into the SRB zone category. He said the applicant had logical reasons for creating a new building but he was concerned that the Board did not have a good sense of what the future plans were for the property in terms of reusing the existing building or demolishing it and something new coming in. He said there were a few ideas out there but the Board was not getting the full picture, and he was concerned that the Board was not given a full assessment of the applicant's plan. He said the property was burdened by wetlands but recent development in Portsmouth created ways of dealing with that. He said the applicant was sort of shoving the nonconforming use of the SRB district into the portion of the property that is narrower and more SRB-centric and was more the portion of the property to keep the characteristics of SRB as much in view as possible. He said the farther back it could be from Middle Rd and the narrow section of the property, the better. He said he struggled with being able to say that the locus of the nonconforming use would be moved that much closer to that portion of the property. He said it brought in negative consequences of making it less applicable to what the zoning ordinance was trying to accomplish with the SRB district and putting it into an area where it was important to have more of those characteristics rather than less. Mr. Rossi said it came down to a single issue of whether the proposal impacted the values of surrounding properties or not. He said the Board was presented with an expert report that was really based on an absence of evidence rather than an evidence of absence of impact, which were two different things, so the Board was left with an expert report saying they could not find any evidence that it would, and realtors were saying that it obviously would, so there was a push and pull. He said the Board was left with making their own judgement, and he thought it was inconceivable that this size of a facility in this location at that elevation relative to the rest of the surrounding homes would not diminish the values of those properties. He said if the application failed on that, it failed everything. Mr. Lucas said the proposed new building was more on the commercial scale, which would have a substantial impact on the neighborhood. He said he researched group home styles and found that they typically have a neutral positive impact on property values but commercial-scale ones have a negative one. He said buyers leave the neighborhood and homes sit longer, so there is a real risk that property values will be decreased and the nature of the neighborhood is affected. Mr. Sullivan said everyone in the City should be proud that the Chase Home is here, and for more than 100 years, they performed wonderful services and provided a social benefit that someone needs to do. However, he said it was a zoning issue, and one of the purposes of a zoning ordinance is to protect the neighbors from harming each other. He said that if someone drives by on Middle Road and looks in the direction of the Chase Home, they see trees. He said if the project were to be built, it would substantially change what one sees when looking in that direction, so therefore it would have a dramatic negative effect on the neighbors. For that reason, he said he agreed with the public speakers who were opposed to the petition.

Mr. Nies asked Ms. Casella a question about the issue of a residential care facility. He said the Legal Notice published said that the variances being requested were for a residential care facility use to be extended to another part of the remaining land, but the Staff table in the memo said the land use is a group care facility, which is a term that was not defined in the zoning ordinance. He said it indicated that the proposed use is a new building for a group care facility. He said he wanted

to make sure that the Board was talking about a residential care facility, which is defined in the ordinance. Ms. Casella said it was a residential care facility and that the term new building per group care facility was a mistake on her part. Mr. Nies said that, related to the residential care facility, it was interesting to him that if the Board listens to the things done at the Chase Home now, part of it is a residential care facility, but there were also off-site things done that he wasn't sure applied to a residential care facility. He said the Chase Home seemed to fit more into the idea that it is more Social Services Campus Residential, which is defined in the ordinance, and not just focused on care for residents. He said if the Board was considering authorizing a nonconforming use, they had to be careful how they specified it and make sure they capture what is really being done. He said he was not sure that the Residential Care Facility definition captured everything being done in the facility. He said he was also concerned that the Board did not really know how much this nonconforming use would expand in the future. He said he thought the proposed building's location depended on what the future plans might be. He said if there was talk about rebuilding the current Chase Home, then putting the building more forward might make some sense, but the Board did not really know what was happening there and what the overall future plans for the property were.

Mr. Mannle said he agreed with his fellow Board members. He said no one would criticize the Chase Home who did great work, but it was a zoning issue. He said he was dismayed that the applicant did not try to talk to City Staff and the Conservation Commission about the parcel, which is slightly smaller than the rectangle close to Middle Road. He said the applicant said there was a big drop off, but the elevation map showed the top of that buildable area as the same elevation as the front of the Chase Home at 52 feet and that it was incorrect to say that it was lower. He said the elevation did drop down before getting to the buildable parcel, but developers all over town were making that type of parcel buildable. He said the extension of the wetlands was tiny, and the 100-ft buffer came out from there. He said he could not support the petition. He said the unknown of the future was weighing heavily on the Board. He said if the applicant came in with the parcel they had and proposed to demolish the current home and a build a brand new facility set back where it is, that would probably be approved, but the Board did not know what would happen. He said the size of the Chase Home was currently being tripled. Mr. Nies said he thought the current building was closer to 22,000 sf, so it was more like a third of an increase. He said he walked by the property twice and went down Sylvester Street twice and it was difficult for him to fully understand what the proposal looks like and exactly what the property looks like. He said he would have preferred having a site walk. He said it was difficult to understand exactly how much of a drop off there was behind the existing building and what the view would be like from the home looking down at the properties. He said a person got a sense from Sylvester Street of what it would look like looking up at the property but did not know the other way. He asked if the Board had an interest in doing a site walk. Mr. Rossi said he did not.

#### **DECISION OF THE BOARD** [Timestamp 2:58:00]

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

Mr. Rossi said the application only had to fail one criterion in order for it to fail to be approved, and that was Section 10.233.24, granting the variance would not diminish the value of surrounding properties. He said the Board heard compelling evidence that there is a strong possibility that

including this structure at its size in this location would likely negatively impact the value of nearby properties, like Middle Rd and Sylvester St and others that perhaps the Board didn't hear about. On that basis, he said he moved to deny the application. Mr. Sullivan concurred and had nothing to add. Mr. Rheume said he would support the motion. He said he thought the first two criteria, not being contrary to the public interest and observing the spirit of the ordinance, were not met. He said it went back to the essential characteristics of the neighborhood. He said what concerned him was the proposal to move the locus of the nonconforming use closer to Middle Rd, where there was an established pattern of house on narrow but deep lot. He said the current use was partly geography and partly because it was pretty far away from Middle Road and did not disturb that rhythm. He said there was enough evidence put forward that such a large structure that much closer to the road would move a nonconforming use that much closer to an area where it would disrupt the general characteristics of the neighborhood. Mr. Nies said he recognized the concerns that were raised but would not support the motion to deny. He said he wished the Board had received more information before they made their decision.

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

Chair Margeson returned to her seat as Chair, and Acting Chair Mattson returned to Vice-Chair status. Mr. Lucas returned to his alternate status.

*Mr. Nies moved to extend the meeting past 10:00, seconded by Mr. Rheume. The motion passed unanimously, 7-0.*

### III. NEW BUSINESS

- A. The request of **Kenneth J and Rebecca T Nicholson (Owners)**, for property located at **53 Pray Street** whereas relief is needed to demolish the covered porch, fence, and bulkhead and construct a three-season room with a roof deck and bulkhead in the same footprints which requires the following: 1) Variance from Section 10.521 to allow a) 6 foot front yard (bulkhead) and 15 foot front yard (structure) where 17 feet are required, b) 7 foot side yard where 30 feet are required, and c) 36% building coverage where 30% is permitted; and 2) Variance from Section 10.515.13 to allow a) a 6 foot fence where 4 feet is allowed, and b) 8 foot arbor gate where 4 feet is allowed. Said property is located on Assessor Map 102 Lot 40 and lies within the Waterfront Business (WB) and Historic Districts. (LU-26-13)

#### **SPEAKING TO THE PETITION [Timestamp 3:03:14]**

Attorney Tim Phoenix representing the owners was present, with landscape architect Robbie Woodburn, design architect Jen Ramsey, and project engineer Eric Weinrieb. Attorney Phoenix reviewed the petition.

[Timestamp 3:09:46] Mr. Nies asked what the 8-ft fence as shown in the packet with an outside and inside elevation represented. Ms. Woodburn said the fence would be on the property line, where 8-ft fences were allowed. Mr. Nies said it was labeled as a 6-ft fence on the site plan. Ms. Woodburn

said there was an 8-ft fence along the top of the property and a 6-ft fence on the side of the property but that the 8-ft fence would be on the property line. Mr. Nies said the BOA approved 39 percent of the coverage in 2012 but that the current coverage was only 36 percent. Attorney Phoenix said his colleague inspected the City files and found that no as-builts were done. He said the Staff Memo that addressed the history of it noted that there was a 12'x20' deck approved in 2012 but that he did not see one physically there, so he assumed there were changes that were not built that resulted in a different number or that there may have been another structure like a shed. Mr. Nies asked Ms. Casella if the Board still needed to grant the applicant another variance for 36 percent coverage. Ms. Casella said by removing the sunroom covered deck, the applicant was removing the nonconformity that required the variance. Mr. Rheume said the front setback in the Waterfront District was 30 feet but that the site plan had an asterisk on the table that noted that the average of abutting properties determined the 17-ft setback. Attorney Phoenix agreed. Mr. Rheume said a 17-ft side setback was needed where 30 feet was required, which sounded like a lot of relief, but it was up against the fact that the property line and the northeasterly corner of the property had a deck and boathouse that happened to fall outside of the applicant's property. Attorney Phoenix agreed and said those structures were over the water. Chair Margeson said she saw the property and that it did not look like the Existing Conditions Plan but looked like there was a block structure next to the house. She asked if it was a covered porch that had been torn down. Ms. Ramsey said there used to be a deck with a roof on it and that part of the deck was still there, along with a ramp going up to the existing doorway. Chair Margeson said the front of the property was set back at four feet and the reason for having that was that things were not closed off. She asked if there was a need for it to go up to six feet. Attorney Phoenix said the setback for the four feet is to the front of the house and that the existing fence is not at the front of the house. He said the photo showed the fence that was there today and that the top of the covered porch could be seen as it was when he took the photo. He said it was only fair to let someone put back a 6-ft fence because it would not close anyone off other than the owner, who was next to a lobster pound. He said the purpose of the 4-ft limitation did not exist there and that rights were established to continue with the 6-ft fence. It was further discussed.

[Timestamp 3:21:55] Attorney Phoenix reviewed the criteria.

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 3:28:35]

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

Mr. Rossi said the overarching consideration was that the entire project was replacing like with like or like with very similar, with regard to the 3-season room and the roof deck. He said granting the

variance would not be contrary to the public interest and the spirit of the ordinance would be observed. He said, to the extent that the proposed use does not conflict with the explicit or implicit purposes of the ordinance, the purpose of setbacks was to preserve light and air. He said there would be no further impingement by allowing the project to proceed, therefore any loss to the applicant at all would fly against substantial justice. He said granting the variance would not diminish the values of surrounding properties, noting that there was no way that replacing the older structures with remodeled and refurbished ones in a very similar if not identical configuration would reduce the values of surrounding properties. Regarding the hardship, he said there were unique aspects to the property in that it is a very small lot, which was not necessarily unique within this particular small area but was very far off of the required lot size in the zone, so relative to the entire zone, it is a special aspect of the property. He said it is uniquely located directly adjacent to the lobster pound, which required a small amount of privacy and explained the fencing. For those reasons, he said the petition satisfied the five criteria. Mr. Nies concurred. He said there were rules about the fencing to keep the property from looking like a walled-off compound, but the fence was very short and set back 15 feet from the property line and that much of the property line was occupied by a house or a garage, so the property would not look like a walled-off compound. He said privacy was an issue that supported allowing the fence.

*The motion passed unanimously, 7-0.*

- B. The request of Madison Commercial Group LLC (Owner) and The Manchester Esthetic Services LLC, DBA Art of Eyebrows (Applicant), for property located at 72 Mirona Road** whereas relief is needed for a change of use from professional office to esthetic services which requires the following: 1) Special Exception from Section 10.440 Use #7.20 to allow Personal services. Said property is located on Assessor Map 253 Lot 3 and lies within the Gateway Center (G2) District. (LU-26-11)

#### **SPEAKING TO THE PETITION [Timestamp 3:33:41]**

The owner Madison Commercial Group's representative Patricia Wright was present and reviewed the petition and criteria.

[Timestamp 3:36:30] Mr. Rheume noted that the floor plan and the photo differed and said there were double doors on one end and a single door on the opposite end. He asked which end the customers would enter through. Ms. Wright said they would enter through the double doors. Mr. Rheume asked if the offices on the right would remain. Ms. Wright said there were two offices there now and that a 1600-sf third office would be built. Mr. Rheume asked if the back corner shown with hatching through it was part of another business. Ms. Wright agreed. She said the third new office would be used as a private treatment room. Mr. Sullivan had some questions clarifying treatments.

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 3:29:21]

*Mr. Nies moved to **grant** the special exception for the petition as requested and advertised, seconded by Mr. Sullivan.*

Mr. Nies said per the standards provided by the ordinance, it was an allowed use for a special exception. He said all activity would take place inside, so the project would pose no hazard to the public or adjacent properties. He said it would comply with all fire rules and there would be no exposure to or release of toxic material. He said there would be no detriment to property values in the vicinity or change in the essential characteristics because it is a commercial area that would not be changed in any way. He said there would not be smoke, gas, dust, or other pollutants, noise, glare, heat and so on. He said the project would pose no traffic safety hazard. He said it was a busy street in a commercial area where that was expected, and the parking lot was huge. He said the project would pose no excessive demand on municipal services because it would take place in an existing commercial establishment. He said there would be no significant increase in stormwater runoff because there would be no changes made to the facility.

*Mr. Sullivan concurred and had nothing to add. The motion **passed** unanimously, 7-0.*

## **IV. ADJOURNMENT**

The meeting adjourned at 10:41 p.m.

Submitted,  
Joann Breault  
BOA Minutes Taker