

PORTSMOUTH ZONING BOARD OF ADJUSTMENT
238 Austin Street Tax Map 135, Lot 61
LU-25-177

OBJECTION TO REQUEST FOR REHEARING

NOW COMES, Owner Lisa Reyes & Applicant Chris Ward (“Applicant”), by and through Ward’s attorneys, Hoefle, Phoenix, Gormley & Roberts, PLLC, and respectfully request that the Portsmouth Zoning Board of Adjustment (“ZBA”) deny the Motion for Rehearing filed by John & Debora Mayer, John Ragonese & Lynda Smith, Evan Baker & Laura Steward, and Keith & Cindy Smith (collectively “Petitioners”) with respect to the February 18, 2026 decision of the ZBA granting variances from Portsmouth Zoning Ordinance (“PZO”) §10.521 for 238 Austin Street (the “Property”) to permit subdivision of an existing lot containing two structures into two lots each developed with homes (the “Project”).

I. EXHIBITS

1. 2/18/2026 Notice of Decision and Findings of Fact.
2. 2/18/2026 Minutes of the Zoning Board of Adjustment.¹

II. REHEARING LEGAL STANDARD

Within thirty days after any...decision of the Zoning Board of Adjustment...any party to the action or proceedings,...may apply for rehearing in respect to any matter determined in the action...specifying in the motion for rehearing the grounds therefore; and the Board of Adjustment...may grant such rehearing if in its opinion good reason therefore is stated in the motion.
RSA 677:2.

The New Hampshire Supreme Court has made clear that a “rehearing is not a matter of right” and “in the interest of finality of decisions by zoning boards, rehearings should not lightly be granted.” McDonald v. Town of Effingham Zoning Bd. of Adjustment, 152 N.H. 171 (2005). The ZBA is considered the expert on matters of zoning and local conditions and its decisions are deemed prima facie lawful. See The Board of Adjustment in New Hampshire, a Handbook for Local Officials, 2022 p. IV-5; Daniels v. Londonderry, 157 N.H. 519 (2008). Rehearing is proper only where the affected party can show technical error or produce new evidence that was

¹2/18/2026 Video begins at approximately the 2:32 mark and is available at <https://www.youtube.com/live/juFDQvfIN20?si=9sruxGuMy3Bvt73V&t=9136>

not available at the time of the first hearing. Loughlin, 15 New Hampshire Practice, Land Use Planning and Zoning, Section 21.18 (4th Ed. 2010)(noting that unavailable evidence should not be evidence that was available and not produced due to lack of preparation).

It is assumed that every case will be decided, originally, only after careful consideration of all the evidence on hand and on the best possible judgment of the individual members. Therefore, no purpose is served by granting a rehearing unless the petitioner claims a technical error has been made to his detriment or he can produce new evidence that was not available to him at the time of the first hearing.

New Hampshire Office of Energy and Planning, The Board of Adjustment in New Hampshire: A Handbook for Local Officials, Chapter IV, P. IV-3 (2022).

III. INTRODUCTION

Petitioners' Request for Rehearing fails to provide new evidence which was unavailable to the Petitioners at the time of the initial hearing and fails to demonstrate the ZBA committed any error in its analysis. Instead, Petitioners erroneously rehash the same points previously considered and rejected by the ZBA. Petitioners' untimely "new" evidence is procedurally barred and provides no grounds for rehearing. Such evidence, if even relevant, was previously available as Drew Bedard evaluated the barn well before the hearing. Petitioners wrongly claim the ZBA abdicated its responsibility to adjudicate the demolition of the barn, when the ZBA has no power to regulate demolition of structures owned by private individuals. Petitioner claims, without legal and evidentiary support, that the ZBA erred in finding that granting the variances is not contrary to the public interest, observes the spirit of the Ordinance, and denial would create an unnecessary hardship. In sum, Petitioners merely disagree with the collective judgement of the ZBA. Because Petitioners fail to establish that the ZBA overlooked any evidence or erred in its analysis, the ZBA must deny the Request for Rehearing.

IV. RESPONSE TO PETIONER'S CLAIMS OF ERROR

- A. Rehearing must be denied where Petitioners have failed to produce evidence unavailable at the time of the initial meeting and their claims that the ZBA must adjudicate the propriety of the barn demolition are wholly without merit.

Petitioners' efforts to introduce a letter from Drew Bedard to rebut the testimony of Applicant's structural engineer is untimely and procedurally barred. "Rehearing is not a matter of right." McDonald v. Town of Effingham Zoning Bd. of Adjustment, 152 N.H. 171 (2005).

Rehearing is proper only where the affected party can show technical error or produce new evidence that was *not available at the time of the first hearing*. Loughlin, 15 New Hampshire Practice, Land Use Planning and Zoning, Section 21.18 (4th Ed. 2010)(*emphasis added*)(noting that unavailable evidence should not be evidence that was available and not produced due to lack of preparation). Given Mr. Bedard evaluated the barn for one of the Petitioners on January 19, 2026, his opinion was clearly available at the time of the February hearing. Petitioners' failure to present such evidence does not afford a basis for rehearing. Assuming *arguendo*, that Bedard's letter is worthy of substantive consideration, lay opinion about the value of preservation or "adaptive reuse" does not counter the expert evidence by Applicant's licensed structural engineer, Alex Ross, P.E. that the structure does not meet current load requirements and improvement of the foundation, floor, roof, and walls to current code is not financially feasible.

Petitioners' claims about demolition of the existing structures and features of the proposed replacement structures erroneously assume unlimited ZBA jurisdiction, contrary to the Ordinance and state law. RSA 674:16 enables municipalities to enact zoning ordinances that regulate *uses* of property; the height, number of stories, size and location of buildings and structures on a lot; and yard size, lot coverage, and density. The plain language of RSA 674:33 I(a) empowers the ZBA to:

- (2) Authorize, upon appeal in specific cases, a variance from the terms of the zoning ordinance if:
 - (A) The variance will not be contrary to the public interest;
 - (B) The spirit of the ordinance is observed;
 - (C) Substantial justice is done;
 - (D) The values of surrounding properties are not diminished; and
 - (E) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.
- (b)(1) For purposes of subparagraph I(a)(2)(E), "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:
 - (A) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and
 - (B) The proposed use is a reasonable one.

RSA 674:33, I(a)(2); The Board of Adjustment in NH; PP 11-9, 10 (2022) (emphasis added). See also Harborside Associates, L. P. v. The Parade Residence Hotel, LLC. 162 NH 508 (2011).

The variances requested by Applicant (frontage, lot size, lot size/dwelling unit, and targeted setback relief for bulkheads/mechanicals) are the sole matters before the ZBA. While

Petitioner would have the ZBA review demolition of the barn, the plain language of RSA 674:16 and 674:33 do not confer authority upon the ZBA to adjudicate all aspects of a residential site redevelopment. While the general purposes of the Ordinance include historic preservation, Petitioner cites no authority for the proposition that an individual owner of property outside the historic district can be compelled to devote substantial resources to bring an ailing structure up to code. Demolition of the barn, dimensional or design aspects of the proposed home or site improvements *which require no variance* are therefore not subject to review by the ZBA merely because other variances are requested. Accordingly, the ZBA must deny the rehearing request.

B. Because Petitioners are unable to demonstrate that the ZBA erred in determining that granting the variances is not contrary to the public interest and observes the spirit of the Ordinance, the ZBA must deny Petitioners' rehearing request.

Malachy Glen and its progeny have held ZBA findings that a variance is contrary to the public interest and inconsistent with the spirit of the Ordinance requires more than mere conflict. Chester Rod & Gun Club, Inc. v. Town of Chester, 152 N.H. 577, 581 (2005). The purpose of a variance is to authorize the landowner to use his property in a manner not otherwise permitted. Loughlin, 15 New Hampshire Practice, Land Use Planning and Zoning, §24.02. (See also Malachy Glen Associates, Inc. v. Town of Chichester, 152 N.H. 102, 107 (2007) “The mere fact that the project encroaches on the buffer, which is the reason for the variance request, *cannot* be used by the ZBA to deny the variance.”).

Rather, the test is whether granting a variance “would unduly and to a marked degree conflict with the ordinance *such that it violates the ordinance’s basic zoning objectives*”. Id. (Emphasis added). Another way to evaluate a variance(s) request is to consider whether granting the variance(s) will “alter the essential character of the locality” or threaten the public health, safety, and welfare. Id. See also Harborside L.P. v. Parade Residence Hotel, LLC 162 N.H. 508 (2011); Chester Rod & Gun Club v. Town of Chester, 152 N.H. 577 (2005).

The New Hampshire Supreme Court has long-articulated the proper analytical framework for determining whether a variance is contrary to the public interest or fails to observe the spirit of the ordinance. This framework includes consideration of whether granting the variance would “alter the essential character of the locality”, an analysis that necessarily examines the requested variance in the context of the neighborhood. See Walker v. City of Manchester, 107 N.H. 382, 386 (1966) (Noting a hardship may be found where similar nonconforming uses exist within the

neighborhood and the proposed use will have no adverse effect on the neighborhood). See also Rancourt v. City of Manchester, 149 N.H. 51 (2003). (noting special conditions include the “property’s unique setting in its environment”).

The ZBA correctly applied the law by considering whether granting variances to allow creation of an additional lot with less than required frontage, lot area, and lot area per dwelling unit. The record shows that the proposal converts an oversized lot with two structures into two lots, each containing one permitted, height-compliant single-family residence. The record reveals that the proposal meets building coverage and open space requirements while rear and side yard setbacks improve over existing conditions.

The ZBA also considered whether the density proposed, sited among other small lots in a thickly settled neighborhood, would alter the essential character of the locality. The record includes exhibits which illustrate the tastefully designed home and demonstrate its compatibility with the neighborhood. A review of the tax map clearly reveals that the proposed yard setbacks are similar to others in the neighborhood. **(Exhibit D)**. The density proposed is similarly compatible given the very small lots on the Union Street end of Coffins Court and the multi-family homes on Austin Street. Because Petitioner has failed to demonstrate any error in the ZBA’s application of law to this application, the ZBA must deny the rehearing request.

C. The ZBA correctly determined denial would result in unnecessary hardship where physical characteristics and location of the Property combine to create special conditions, no fair and substantial relationship exists between the purposes of the ordinance as applied in this instance, and the proposed use is reasonable; accordingly, the ZBA must deny Petitioners’ rehearing request.

RSA 674:33, I(b) articulates a three-part test to establish unnecessary hardship. The first requirement is that the property have “special conditions distinguishing it from other properties in the area”. Contrary to Petitioners’ assertions, in order to find special conditions, it is not necessary for the Property to be the only burdened property, but only that it be burdened distinctly. Garrison v. Town of Henniker, 154 N.H. 26, 32-33 (2006). The evidence established that Property is one of the largest on its block and is the only “through lot” in the area. Its configuration of frontage on two streets connected by a narrower corridor is distinct and prevents it from being utilized more efficiently. Given that the lot size, configuration, and frontage together support the finding of special conditions which uniquely burden the Property, Petitioner’s request for rehearing is without merit and must be denied.

The second prong of the variance criteria examines whether there is a fair and substantial relationship between the purposes of the Ordinance and its application in this instance. Lot area, frontage, density limits, and setbacks exist in order to: prevent overburdening/overcrowding of the land; provide sight lines, air, light, and space; and ensure separation between properties to treat stormwater. The record establishes and a majority of the ZBA found that the proposed structures improved over existing conditions. Petitioner may disagree with the ZBA's determination that no fair and substantial relationship exists between the general purposes of the Ordinance and its specific application, but having failed to point to legal or technical error, their Request for Rehearing must be denied.

The final element of the hardship criteria considers whether the proposed use is reasonable. If the proposed use is permitted, it is deemed reasonable. Vigeant v. Hudson, 151 N.H. 747 (2005). Residential uses are permitted in the GRA Zone. The Property exists among other small lots, some containing duplexes or multi-unit. The proposal to subdivide this oddly-shaped through lot is entirely reasonable. Because Petitioner has not presented any technical or legal error in the ZBA's analysis, their Request for Rehearing must be denied.

V. CONCLUSION

In summary, each variance request was supported with detailed plans, other exhibits and expert testimony at the hearing where Petitioner's input was presented and considered by the ZBA. The ZBA acted reasonably and the reasoning of the board members in finding the criteria for each variance satisfied is contained in the minutes. Petitioner provides neither any factual nor technical error by the ZBA requiring rehearing nor presents any new evidence that was not available at the time of the first hearing.

For all of the reasons stated herein together with the original submission and presentation by Applicant's team, and the February 18, 2026 Meeting Minutes and video, Lisa Reyes and Chris Ward respectfully request that the ZBA deny the Request for Rehearing.

Respectfully submitted,
Chris Ward



By: R. Timothy Phoenix
Monica F. Kieser



CITY OF PORTSMOUTH

Planning & Sustainability
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Portsmouth, New
Hampshire 03801
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ZONING BOARD OF ADJUSTMENT

EXHIBIT 1

February 25, 2026

Lisa Paige Reyes
238 Austin Street
Portsmouth, New Hampshire 03801

**RE: Board of Adjustment Request for property located at 238 Austin Street,
Portsmouth NH 03801 (LU-25-177)**

Dear Property Owner:

The Zoning Board of Adjustment, at its regularly scheduled meeting of **February 18, 2026**, considered your application for the property located at 238 Austin Street whereas relief is needed to demolish the existing structures, subdivide the lot and construct a new home on each lot which requires the following for the proposed Austin Street Lot: 1) Variance from Section 10.521 to allow a) 49.75 feet of frontage where 70 feet is required; and b) an 8.5 foot right side yard where 10 feet is required. The following is required for the proposed Coffins Court Lot: 1) Variance from Section 10.521 to allow a) 2,884 sq. ft. of lot area where 3,500 sq. ft. is required, b) 2,884 sq. ft. of lot area per dwelling unit where 3,500 sq. ft. is required, c) a 5.5 ft. side yard where 10 feet is required; and d) an 18 foot rear yard where 20 feet is required. Said property is shown on Assessor Map 113 Lot 28 and lies within the General Residence A (GRA) District. As a result of said consideration, the Board voted to **grant** the request as presented and advertised.

The Board's decision may be appealed up to thirty (30) days after the vote. Any action taken by the applicant pursuant to the Board's decision during this appeal period shall be at the applicant's risk. Please contact the Planning & Sustainability Department for more details about the appeals process.

Approvals may also be required from other City Commissions or Boards. Once all required approvals have been received, applicant is responsible for applying for and securing a building permit from the Inspection Department prior to starting any project work.

This approval shall expire unless a building permit is issued within a period of two (2) years from the date granted unless an extension is granted in accordance with Section 10.236 of the Zoning Ordinance.

The Findings of Fact associated with this decision are available: attached here or as an attachment in the Viewpoint project record associated with this application and on the Zoning Board of Adjustment Meeting website:

<https://www.cityofportsmouth.com/planportsmouth/zoning-board-adjustment/zoning-board-adjustment-archived-meetings-and-material>

The minutes and audio recording of this meeting are available by contacting the Planning & Sustainability Department.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Beth I Margeson".

Beth Margeson, Chair of the Zoning Board of Adjustment

cc: Shanti Wolph, Chief Building Inspector

Rosann Maurice-Lentz, City Assessor

Chris Ward, Applicant

R. Timothy Phoenix, Hoefle, Phoenix, Gormley & Roberts, PLLC

Monica F. Kieser, Hoefle, Phoenix, Gormley & Roberts, PLLC

Findings of Fact | Variance

City of Portsmouth Zoning Board of Adjustment

Date: 02-18-2026

Property Address: 238 Austin St.

Application #: LU-25-177

Decision: **Grant**

Findings of Fact:

Effective August 23, 2022, amended RSA 676:3, It now reads as follows: The local land use board shall issue a final written decision which either approves or disapproves an application for a local permit and make a copy of the decision available to the applicant. **The decision shall include specific written findings of fact that support the decision. Failure of the board to make specific written findings of fact supporting a disapproval shall be grounds for automatic reversal and remand by the superior court upon appeal, in accordance with the time periods set forth in RSA 677:5 or RSA 677:15, unless the court determines that there are other factors warranting the disapproval.** If the application is not approved, the board shall provide the applicant with written reasons for the disapproval. If the application is approved with conditions, the board shall include in the written decision a detailed description of all conditions necessary to obtain final approval.

The proposed application meets/does not meet the following purposes for granting a Variance:

Section 10.233 Variance Evaluation Criteria	Finding (Meets Criteria)	Relevant Facts
10.233.21 Granting the variance would not be contrary to the public interest.	YES	- The proposal will not violate the general characteristics of the neighborhood in a significant way. Applicants go to the Board to ask for some level of relief, and the zoning ordinance is very broad in its application. The Board recognizes that individual properties may have characteristics that lend themselves to doing something that is not strictly in compliance with the neighborhood. It will be tight but better than what was there now. - The Planning Board and TAC could have significant concerns that could change what would or would not get developed in that location.

10.233.22 Granting the variance would observe the spirit of the Ordinance.	YES	• The proposal will not violate the general characteristics of the neighborhood in a significant way. Applicants go to the Board to ask for some level of relief, and the zoning ordinance is very broad in its application. The Board recognizes that individual properties may have characteristics that lend themselves to doing something that is not strictly in compliance with the neighborhood. It will be tight but better than what was there now. • The Planning Board and TAC could have significant concerns that could change what would or would not get developed in that location.
10.233.23 Granting the variance would do substantial justice.	YES	• The property is tight and oddly shaped, and the applicant is trying to take advantage of that, which gives the applicant the slight advantage in the balancing test.
10.233.24 Granting the variance would not diminish the values of surrounding properties.	YES	• The barn has a unique historic interest and harks back in time, and a new residential use will not negatively impact surrounding property values because the home will be consistent with other things in that area.
10.233.25 Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship. (a)The property has special Conditions that distinguish it from other properties in the area. AND (b)Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one. OR Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.	YES	• The property is unique because it fronts on two streets and has an ell connector that once belonged to two separate parcels. • A lot has changed in the 150-year period, and to say that it should not change one more time does not make sense. • The proposal is to put in a residential use that is consistent with the other residential uses in the immediate neighborhood.

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

7:00 P.M.

February 18, 2026

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

MEMBERS EXCUSED: Thomas Nies

EXHIBIT 2

ALSO PRESENT: Jillian Harris, Planning Department

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

*Mr. Mannle moved to suspend the rules in order to take the Old Business, Petition B, 698 Middle Rd out of order. Mr. Sullivan seconded. The motion **passed** unanimously, 7-0.*

*Mr. Sullivan moved to **postpone** the 698 Middle Rd petition to the March 17 meeting, seconded by Mr. Mannle. The motion **passed** unanimously, 6-0, with Chair Margeson abstaining.*

I. APPROVAL OF MINUTES

A. Approval of the January 21, 2026 meeting minutes.

*Vice-Chair Mattson moved to **approve** the January 21 minutes as **amended**, seconded by Mr. Rheaume.*

Mr. Rheaume requested that the word 'Board' be changed to 'zoning ordinance in the following sentence on page 12: "He said there was a big fence back there for several years when it was the back side of a Middle St property, but a 6' tall batten board fence that follows the contours of the property was exactly what the Board did not want."

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

B. Approval of the January 27, 2026 meeting minutes.

*Mr. Rossi moved to **approve** the January 27 minutes as presented, seconded by Mr. Rheaume. The motion **passed** unanimously, 7-0.*

II. OLD BUSINESS

- A. The request of **Colbea Enterprises LLC (Owners)**, for property located at **1980 Woodbury Avenue** whereas relief is needed to demolish and redevelop an existing gas station and convenience store which requires the following: 1) Special Exception from Section 10.440, Use #8.122 to allow a convenience goods 2 use with 24 hours per day operation; 2) Variance from Section 10.5B33.20 to allow for a front lot line build out of 0% where a minimum of 75% is required for a commercial building; 3) Variance from Section 10.5B34.60 to allow for a front setback from the lot line of 27 feet on Woodbury Avenue and 36.5 feet on Gosling Road where a maximum of 20 feet is required; 4) Variance from Section 10.5B83.10 to allow for parking spaces to be located between the principal building and the street; and 5) Variance from Section 10.843.33 to allow for pump islands to be located within 37 feet of the lot lines where 40 feet is required. Said property is located on Assessor Map 239 Lot 11 and lies within the Gateway Corridor (G1) District. (LU-25-39)

SPEAKING TO THE PETITION [Video timestamp 9:14]

Attorney Chris Drescher was present on behalf of the applicant Colbea Enterprises. He noted that they were before the Board again because two abutters had not received notification. He also said a change to the petition was made. He reviewed the petition, noting that the drive-thru was previously omitted and that the No. 5 variance requested was now 37 ft instead of the previous 34.7 ft and was an improvement. He said the address was changed to 90 Gosling St to correct the setback issue.

The Board had no questions, and 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 14:55]

*Mr. Rossi moved to **grant** the variances for the petition as presented and advertised. He said all the variances were approved at the July 15, 2025 meeting and that there were no substantive changes to the project design except for a change in address, so all the prior rationale for approval still applied. Mr. Rheume concurred and said the motion was the reaffirmation of the Board's approval at the July 15 meeting. The motion **passed** unanimously, 7-0.*

- B. **REQUEST TO POSTPONE** 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) **REQUEST TO POSTPONE**

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

- C. The request of **Michael R and Isaac M. Roylos (Owners)** and **Christopher Cloutier (Applicant)**, for property located at **25 Sims Avenue** whereas relief is needed to create a buildable lot which requires the following: 1) Variance from Section 10.521 to allow a) 5,000 square feet of lot area where 15,000 is required, b) 5,000 square feet of lot area per dwelling unit where 15,000 is required, and c) 50 feet of frontage where 100 feet are required. Said property is located on Assessor Map 233 Lot 71 and lies within the Single Residence B (SRB) District. (LU-25-169)

SPEAKING TO THE PETITION [Timestamp 17:05]

Attorney Tim Phoenix was present on behalf of the applicant Christopher Cloutier, who was also present along with Bruce Scamman of Emanuel Engineering. Attorney Phoenix said they would address the concerns of the neighbors regarding stormwater runoff and ponding. He reviewed the history of the lot and past requirements for property merging. He said the applicant wanted to place a modest 946 sf home on the lot and that it would fit within the building envelope and meet setbacks. He explained why the only relief needed was for the lot frontage, lot size, and lot area per dwelling unit and said the lot would be unusable if those variances were not granted, which could result in a taking of the lot. He said most of the lots in the area did not meet the 15,000 sf minimum lot size requirement. He said they addressed the stormwater issue. He reviewed the criteria.

[Timestamp 28:39] Mr. Rheume asked if the existing home on the remaining two-thirds of the lot was not proposed for development and fully met the setback requirements. Attorney Phoenix said he had not run the numbers on that. Mr. Sullivan asked if Attorney Phoenix felt that the City's granting of the unmerging of the lots might somehow constitute a taking. Attorney Phoenix said he did not feel that way and simply meant that the City's unmerging of the lots reflect the rights of the owner and that the City went through the analysis to determine whether the lot was worthy of unmerging, so they approved it, restoring it to its original size and frontage. With respect to the taking, he said the lot would have little or much less value as a buildable lot if the variance were denied. He said the application met all the other dimensional requirements. Mr. Rossi said the Planning Board meeting minutes did not mention the purpose of the unmerging of the lots. Relative to the BOA's criteria for granting a variance, he asked if it was Attorney Phoenix's contention that the fact that those two activities happened at the Planning Board and then the City Council was an implicit statement that making this a buildable lot would not conflict with the ordinance, or an explicit statement, or any kind of statement at all. Attorney Phoenix said he could not say that those decisions implicitly or explicitly meant that the applicant could build on the lot. He said the unmerging of the lots was not dependent on what one may or may not be able to do in the future but was dependent on the fact that the lot pre-existed the zone that now made it nonconforming.

[Timestamp 34:32] Mr. Scamman said the proposed modest home would meet all the setback requirements. He said they designed a drainage basin along the drip edge around the whole house. He said there was natural ponding in the back of the lot on Essex Street but the overflow went across 140 Essex Street and then into the City's drainage system. He said the amount of stormwater would be reduced. It was further discussed. Mr. Rossi asked what the system's durability was and whether it could handle stormwater change as silt built up in it. Mr. Scammon said any drainage structure needed maintenance and that most of the water would just drip off the roof and there would not be a lot of road debris. Mr. Rossi asked if the system came with a guarantee. Mr. Scammon said the system was permitted by the State of NH and that having it in stone would make it a healthier system than open stormwater storage. Vice-Chair Mattson asked if the stormwater would increase or be the same if a home within the building envelope was built without any stormwater management. Mr. Scammon said the stormwater would definitely increase.

Chair Margeson opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

No one spoke.

SPEAKING IN OPPOSITION TO THE PETITION [Timestamp 41:43]

Cassy Saltus of 122 Essex Avenue said her property shared the 50-t back lot line with Lot 44 and was downhill from it. She said the house was sold, the trees were cut down, and a new house would be built on a nonconforming lot. She said the stormwater flowed downhill to her lot. She said a structure that covers 26 percent of the wooded lot would require extensive removal of woodlands from Lot 44, which would allow more stormwater to pond into her backyard.

Corey Clark of 152 Essex Ave said no on-site testing was done and that the location likely had bedrock. He said a lot of the surrounding lots were merged and were not as shown on the 1918 map. He said the lot was not currently served by municipal sewer due to the shallow bedrock. He said any connection to the sewer lines would require major utility work and digging.

Whitney Dooley of 140 Essex Ave said the requested variances were major departures from the zoning requirements and the hardship was self-created because the owner chose to unmerge the lot, knowing that it would become unconforming. She said the addition would increase stormwater toward her house. She said the applicant's stormwater study assumed ideal conditions and that there was no maintenance plan, inspection requirements, or enforcement plan.

Bill Dooley of 140 Essex Ave said a hardship was not demonstrated. He said the other nonconforming properties in the neighborhood were built long before the ordinances. He said the current owner chose to unlawfully unmerge the lot to sell the other lot and was maximizing profits.

Brett Whitmarsh of 87 Sims Ave said the trees on the applicant's property protected the neighborhood and she thought the lot was too small to build on.

Lucia Vonletkemann of 87 Sims Ave said it would take a lot of blasting to put sewer on the property. She said the flooding and ponding were egregious. She said the mature trees absorbed a lot of stormwater runoff and should not be torn down.

Steven Parsons of 160 Essex Ave said the application was not complete and had no building plans, which was a red flag. He said the lot was small but had a lot going on, including the slope, stormwater, and ledge. He said it was a self-imposed hardship by the owner.

Harry Revels of 122 Essex Ave said the stormwater study assumptions were not fact. He said his use along the shared back lot line was gone.

Angela Lambert of 65 Benson St said she would get all the stormwater runoff.

SPEAKING TO, FOR OR AGAINST THE PETITION [Timestamp 1:11:27]

Attorney Phoenix said Mr. Scamman was a long-experienced engineer and clearly showed that the runoff would be less. He said the back of the Saltus lot was low but the front was much higher, so water ran from the top of the property to the bottom. He said the applicant's lot legally exists and the owner has the right to recreate it because it was wrongfully merged. He said many of the nearby lots did not meet the 15,000 sf of lot area requirement. He said the proposed house itself would have a separate review by the City for a building permit. He said the lot had special conditions that had existed since 1918 and that the City inappropriately merged it with others.

Mr. Scamman said the sewer would be part of the building permit process and that the applicant's design would improve the stormwater issue.

William Dooley explained why the applicant's estimate of zero waterflow onto other properties was unrealistic. He said if the property were regraded, it would slope down more and the ponding in his yard would not have a way to get out and would flood his basement.

Mr. Sullivan asked Attorney Phoenix if he felt that the Board was obligated as a matter of law to ignore what the neighbors said about drainage. Attorney Phoenix said it was a matter of fact.

Mr. Scamman explained how the project would allow more water to be stored on the lot.

Stephen Parsons of 160 Essex Ave said he was a civil engineer with 28 years of experience and that he found many faults with the applicant's plan.

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

DISCUSSION OF THE BOARD [Timestamp 1:30:18]

Mr. Rossi said it hinged on the approval criterion of impact on the property values of the surrounding properties and that he had to go by what was in the report and what was stated by Mr. Scamman. He said two issues that troubled him with regard to the impact on the surrounding property values was a temporal disconnect that if the Board granted the variance, it would stay with the property forever. He said the Board had also been told that the report contains a description of how the system functions as designed and installed, but in order for it to continue to function properly, it would require maintenance and that there was no guarantee that it would continue to function properly because there was no guarantee about how anyone who owns the property would maintain the system and keep it clear of debris as well as sand or silt seeping into it from below the ground. He noted that Mr. Scamman said that without the drainage system, the installment of a house on the property would increase the runoff on the surrounding properties. He said based on the evidence and testimony by the expert who created the report, he was left to believe that it was not necessarily a durable solution to the main issue that would affect the value of the surrounding properties, so therefore he would not support the application. Mr. Mannle said he could not support it because the property was sold by the Roylos' successor six months before to a trust, so the Roylos' request was wrong and the Board had no documentation that the trust or their representatives approved the application. Mr. Rheume said the lots were now two separate ones per the City Council's decision. He said the project would create some kind of impact to the abutters but the Board was being asked for a dimensional consideration of whether the lot of that square footage and frontage was something that should be considered buildable. He said the owner could choose to cut the trees down. He said there was an area that currently collects water but the property owner could build a larger home than spans across the lots or do more landfill. He said the abutters' concerns were not things that the Board had full cognizance over and that other City groups would review those. He said it came down to the total square footage and the fact that the lot was an established lot of record going back over 100 years. He said there were many different sized lots in the neighborhood and asked if the Board could say that the applicant's lot would not meet the requirements of being a buildable lot. Mr. Sullivan said the neighbors' testimony persuaded him that they have something to be protected from. He said if the Board made the lot eligible to have a home on it, the home would bring impermeable surfaces and the negative effects on the neighborhood. He said it would be contrary to the public interest, would not do substantial justice, and would diminish the values of surrounding properties.

DECISION OF THE BOARD [Timestamp 1:39:17]

*Vice-Chair Mattson moved to **approve** the variances as presented and advertised. No one seconded.*

Vice-Chair Mattson said he empathized with the neighbors and that there was clearly a flooding issue, but denying the variance would not stop that issue, and new construction would improve the stormwater management. He said a new homeowner could neglect it, so it was not a guarantee but it was a guarantee that the stormwater plan would be an improvement. He said it seemed that the water pooled because it was a low point in the neighborhood. He said the lot already exists and had a buildable area of 30'x44'. Chair Margeson said the lot was involuntarily merged and was

unmerged by the City, and if the variance was not granted, there would be no reasonable use of the lot, which could technically be a taking. She said she was not convinced that building a structure on the site would add to the stormwater runoff and flooding issues, given the stormwater infrastructure improvements that were described. She said it would probably help the flooding issue. She said substantial justice may be problematic for the property because substantial justice would be done to the public by not granting the variances.

*Mr. Rossi moved to **deny** the petition, seconded by Mr. Sullivan. [Timestamp 1:49:37]*

Mr. Rossi said the application only had to fail one criterion and that it failed Criterion No 10.233.24, granting the variance will not diminish the values of surrounding properties. He said the Board was being asked to approve a permanent change in the use of the property based on mitigation of stormwater in a system that will function for a finite period of time if the property is maintained, with no obligation of the property owner to maintain the system and no guarantee that it will be maintained or that it would function even if it were properly maintained. He said that was a problem and that a case could be made that there is a loss to the public if the variance is approved, particularly to the neighbors. He said a lot of people would be affected by the stormwater.

Mr. Sullivan concurred and referred to his previous comments. The motion was further discussed.

*The motion **failed** by a vote of 4-3, with Mr. Lucas, Vice-Chair Mattson, Mr. Rheume, and Chair Margeson voting in opposition.*

*[Timestamp 1:55:47] Vice-Chair Mattson moved to **grant** the variances for the petition, seconded by Mr. Rheume.*

Vice-Chair Mattson said granting the variances would not be contrary to the public interest, and the spirit of the ordinance would be observed. He said a few properties across the street were the same size and many other properties in the neighborhood were below the required square footage for the zone. He said the house would be a modest one by nature of the smaller lot and fitting within the yard setbacks. He said the ordinance stated that there was a desire for more affordable homes, and by the nature of the parcel being smaller, it would fall under that. He said substantial justice would be done because the benefit to the applicant should not be outweighed by harm to the general public or others. He said the Board heard comments from the neighbors that were concerning but that he did not know if it applied specifically to the property and the variances being requested. He said it would not change anything about the actual property because it was the same parcel that had been re-established with the same property lines. He said the flooding issues would still remain if the variances were denied. He said denying the variances would prevent an otherwise buildable lot with a decent-sized home, which would be substantial justice. He said that benefit to the applicant would not outweigh any potential harm of a future stormwater mitigation system failing from lack of maintenance. He said granting the variances would not diminish the values of surrounding properties, noting that the expert testimony was not conclusive but also could not be ignored. He said the parcel exists and any new construction of a modest single-family home would not decrease the values of surrounding properties. He said literal enforcement of the ordinance would result in unnecessary hardship due to the property's special conditions that included the legal definition of the merging and unmerging. He said despite the small lot size, there was a buildable envelope that

would meet all the yard setbacks regarding light, air, and privacy. He said the proposed use is a reasonable one, a modest single-family home in a neighborhood of modest single-family homes.

Mr. Rheume said the applicant showed that a 50'x100' lot was a buildable one and would be reviewed and approved by the City's building department and the Department of Public Works. Chair Margeson said the stormwater issues were not created by the lot but that she understood the neighbors' concerns. Mr. Rossi said the Board's purview was to decide whether "the" lot in question was a buildable lot and not whether just "a" lot of that size was a buildable lot. He said the use of the indefinite article was an important distinction.

*The motion **passed** by a vote of 4-3, with Mr. Sullivan, Mr. Rossi, and Mr. Mannle voting in opposition.*

D. The request of Stewart Baker Revocable Trust (Owner), for property located at 20 Coffins Court whereas relief is needed for the construction of a spiral staircase on the left side of the home and dormers on the third floor which requires the following: 1) Variance from Section 10.521 to allow a) 4 foot right side yard and a 5 foot left side yard where 10 feet are required (*approved January 21, 2026*), b) 50.5% building coverage where 35% is allowed; c) 4.5% open space where 20% is required; and d) a 6.5 foot rear yard where 20 feet is required. Said property is located on Assessor Map 135 Lot 53 and lies within the General Residence C (GRC) District. (LU-25-164)

Mr. Lucas recused himself from the petition. Chair Margeson noted that the Board approved Variance 1a at their January meeting and postponed consideration of Variances 1b and 1c until 1D could be noticed. She said therefore only Variances 1b, 1c, and 1d would be addressed.

SPEAKING TO THE PETITION [Timestamp 2:20:05]

Attorney Stephanie Johnson was present on behalf of the applicant, along with the owners, project engineer Alex Ross, and project architect. She reviewed the petition and criteria.

The Board had no comments, and Chair Margeson opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD [Timestamp 2:27:16]

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

Mr. Rossi said the Board had heard and considered the application in a previous meeting and that the reason it was before them now was because there was a technical issue regarding the noticing of the application at the prior meeting. On that basis, he said all the facts the Board found in the

previous discussion were still relevant, and he believed that granting the variance would be consistent with Sections 10.233.21 and .22. He said the project would observe the spirit of the ordinance because it was a small change in the footprint of the house and would not conflict with the purposes of the ordinance in terms of preserving open air, light, and space in the surrounding properties. He said substantial justice would be done because there would be no loss to the general public that would outweigh the loss to the applicant should the petition be denied. He said granting the variances would not diminish the values of surrounding properties, noting that the Board heard confirmation from the surrounding property owners that were in support of the project. He said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. He said the home was an older one and that nothing could be done about its location on the property. He said the encroachments were preexisting and impractical to change, and that the application did not add to those in a substantial way. Mr. Rheame concurred. He said the application was driven by the desire to create a screened-in porch on the back side and to move the stairs closer to the edge of the property. He said it was an open structure, however, and would not affect light and air.

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

Mr. Lucas recused himself from the following petition.

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

SPEAKING TO THE PETITION [Timestamp 2:33:53]

Attorney Tim Phoenix was present on behalf of the applicant, with the applicant's representative Mike Garrapy and the project engineer Alex Ross. Attorney Phoenix said the intent was to remove the existing home and barn in favor of a new home. He said the house and barn were not in good shape. He explained why the variances were needed. He noted that a letter from the NH Preservation Alliance about whether the barn could be preserved. He said he did not think that was possible but thought the barn could be moved off the property. He said the barn was not an issue because the house was not in the Historic District. He reviewed the criteria.

[Timestamp 2:48:16] Mr. Rossi asked if where the applicant chose to draw the new dividing line between the lots drove the requirements for the variances for the rear lot line on the Coffins Court lot. Mr. Ross said he prepared the survey plans and that the parcel on Coffins Court was an odd-

shaped one. He said the rear line was the farthest from Coffins Ct, which was shown as 22.92 feet. He said the other rear line was considered a side line. Mr. Rossi said if the line were drawn 1.6 feet farther into the Austin St lot, the variance would not be required. He asked why it was there. Mr. Ross said if they moved that line an inch, the Austin St parcel would not be conforming. He noted that in the 1980s, there was a division line between the two parcels. Mr. Rheaume said the driver for the bulkhead was the 5-1/2 ft radius away from the side lot line corner, so he did not think the 18-ft rear yard setback was really needed. Mr. Ross agreed and said they wanted to cover all the bases. Mr. Rheaume confirmed that the condensers were allowed to be anywhere but the front yard setback due to the recent zoning ordinance change, so no relief was necessary for that. He asked if the steps were an element that could be a setback for the Coffins Ct property. Mr. Ross agreed. Mr. Rheaume asked if Mr. Ross looked at the turning radius needed to get a vehicle into the proposed garage and driveway. Mr. Ross said they went before the Technical Advisory Committee to address the issue and would return to them and the Planning Board for a full review. Vice-Chair Mattson noted that there were companies that paid for post-and-beam structures and made them compliant on a separate property. Chair Margeson said the Board had a letter from the NH Preservation Alliance stating that the barn was historically and architecturally significant, and she asked if the barn's removal would run afoul of that provision. Attorney Phoenix said it was almost impossible to save the barn and financially unfeasible to make it code compliant, but they could agree to preserve it by moving it off the property.

Chair Margeson asked why the current zoning prevented the applicant from putting a single structure on the property. Attorney Phoenix said a garage or ADU could be put on the lot but thought it was a shortsighted analysis of what was permitted under the ordinance. He said they would improve setbacks and do other positive things. It was further discussed. Chair Margeson said she thought it was a hardship problem due to the very tight area and that it was concerning to subdivide a lot and put two houses on it. She asked Attorney Phoenix to address those concerns in terms of light and air and the characteristics of the neighborhood. Attorney Phoenix said the barn would make all those issues worse and that what they planned to do would improve all those issues. Chair Margeson said there was a 'for sale' sign on the lot and asked if the applicant would buy the property. Attorney Phoenix said his client Chris Ward intended to buy all of it. Mr. Garrapy agreed. Attorney Phoenix showed how the existing home was close to the front lot line and one of the side lot lines. It was further discussed.

Chair Margeson opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

No one spoke.

SPEAKING IN OPPOSITION TO THE PETITION [Timestamp 3:11:43]

John Ragonese of 74 Cabot Street said his backyard was the barn at one time. He said the request before the Board was from the seller and the buyer. He said the current buyer wanted to buy the

property but it was contingent on the variances being granted. He said it was not the Board's responsibility or objective to ensure that the two parties were made whole with respect to speculative investment decisions, yet the applicants were seeking relief on that basis. He said the memo from the applicant minimized several impacts of the project. He said there were extremely tight houses in that area and that he did not think any analysis was done.

John Mayer of 68 Cabot Street said his house was 70 years older than the barn and that they invested the money to make it livable. He said if the Board approved the variance, permission would be given to the applicant to remove the barn and the house. He said the owner made the house unlivable by her renovations, and now she wanted a remedy in the form of selling the property. He said it was a self-created hardship. He said the two structures were contributing structures to the Historic District due to the National Register nomination.

Laura Stewart of 20 Coffins Ct said the project would block light and air and that the owner would need her driveway for the turning radius.

Barbara Ward of 16 Nixon Park said she was a member of the Portsmouth Advocates. She read a statement written by the Director of the Historical Society that included the following: The preservation and enhancement of historic buildings and structures are reflected citywide and are not limited to the Historic District. The barn is a contributing resource to the Downtown Portsmouth National Historic District, which means that both the NH Division of Historical Resources and the National Park Service determined that it meaningfully contributes to Portsmouth's historic fabric. Urban barns are increasingly rare and help tell an authentic story of how Portsmouth functioned, and once demolished, that story cannot be reconstructed.

Keith Smith of 30 Coffins Ct said his family would lose privacy because their bedrooms would be looking into the proposed house's bedrooms.

SPEAKING TO, FOR, OR AGAINST THE PETITION [Timestamp 3:34:03]

John Ragonese of 74 Cabot Street said the design drawings showed a level grade but that the grade was actually five feet lower on the left side of the house. He said the s-shaped lot had not been in existence for a long time because a property line adjustment was granted that made his lot nonconforming. He said the City was responsible.

Attorney Phoenix said the barn's preservation had to be balanced against people's property rights. He said the barn had been deteriorating for years, likely due to the cost of renovating it. He questioned the vagueness of the NH Preservation Alliance's letter because they did not have hard facts or an expert's opinion. He said the lot next door did not meet the 350-sf lot area requirement but people had been living there for almost 100 years. He said the project met the requirements and that what would go in there would be more dimensionally compliant with zoning.

Barbara Ward recommended that the neighbors and the owner discuss solutions.

Cynthia Smith of 30 Coffins Ct said the applicant should build a smaller home.

Attorney Phoenix said the property was for sale twice in the past few years and that no one from the NH Preservation Alliance offered to buy it.

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

DISCUSSION OF THE BOARD [Timestamp 3:48:58]

Mr. Rossi said it was important to clarify what is and what is not in the Board's purview. He said the Board was not here to facilitate the profit motive of property owners but was not here to thwart it either. He said approving the demolition of structures in town were not within the Board's purview, and preserving historic structures outside of the Historic District were also not within their purview. He suggested that people who live in such neighborhoods participate in the master plan process to make their opinions known. Vice-Chair Mattson said even if the Board denied the variance, the barn could be demolished. He said what was proposed was closer to conforming and more typical to the neighborhood than what was currently there, in terms of setbacks and the building's size and height. Mr. Rheume said the City established a Demolition Committee, which was not really supported by State law. He said there was some talk about the National Historic District but that it was very broad. He said there was a dollar value associated with the applicant's property that truly determined if something could be preserved or not. He said issues of what a rear property line was could actually be a side property line, according to the way the ordinance was written. He said the only thing in the applicant's petition that was a rear property line was the new dividing line that the applicant was creating between the two properties and that everything else was a side property line. He said the main structure was within the envelope that the applicant was allowed to build in, with the exception of a small balcony or a set of stairs.

DECISION OF THE BOARD [Timestamp 4:08:14]

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

Mr. Rheume said the Board was just one step into the process and that there would be more steps that still apply before a home is built on either property. He said currently the property was fully conforming now with a single-family home and an accessory structure. He referenced a similar case on South St where the Board had the same debate and that was also a rectangular property and had the potential to be rebuilt with a two-family structure. He said what was unique about the current applicant's property was that it was ell-shaped, which created a sense that it could have been a two-dwelling property. He said in 1976, there were two separate properties. He said now the property dictates that there is a natural parting point in the connector between the two. He said he was fine with where the property line is and that one of the two lots will have to be smaller than is allowed per the zoning ordinance. He said the fundamental point is that there is a unique hardship associated with the property. As far as historic preservation, he said he loved working with the Portsmouth Advocates but the Board has a legal obligation to uphold the rights of property owners as well, and

there was a balance there. He said the proposed home looked the same as many of the other properties along Coffins Ct, and Coffins Ct was unique and had a very narrow street. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said the proposal would not violate the general characteristics of the neighborhood in a significant way. He said people came to the Board to ask for some level of relief, and the zoning ordinance is very broad in its application. He said the Board recognizes that individual properties may have characteristics that lend themselves to doing something that is not strictly in compliance with the neighborhood. He said it would be tight but better than what was there now. He said the Planning Board and TAC could have significant concerns that could change what would or would not get developed in that location. He said substantial justice would be done. He said the property was tight and oddly shaped, and the applicant was trying to take advantage of that, which he thought gave the applicant the slight advantage in the balancing test. He said granting the variances would not diminish the values of surrounding properties. He said the barn has a unique historic interest and harks back in time, and he did not see that a new residential use would negatively impact surrounding property values because the home would be consistent with other things in that area. He said the property was unique because it fronts on two streets and has an ell connector that once belonged to two separate parcels. He said a lot had changed in the 150-year period, and to say that it should not change one more time did not make sense. He said the proposal was to put in a residential use that is consistent with the other residential uses in the immediate neighborhood. Mr. Sullivan concurred. He said writing a zoning ordinance to regulate everything that happens on every property everywhere in the City was difficult, particularly in Portsmouth's 400-year period. He said people built whatever they wanted during the first 325 years, but for the last 75 years, the City tried to impose regulations over all that. He said there would always be circumstances where some relief had to be afforded. He said the barn was one of the reasons why the property was unique and had to get some kind of relief.

*The motion **passed** by a vote of 4-2, with Mr. Mannle and Chair Margeson voting in opposition and Mr. Lucas recused.*

*At this point in the meeting, Vice-Chair Mattson moved to go past 10:00, seconded by Mr. Rheume. The motion **passed** unanimously, 7-0.*

III. NEW BUSINESS

- A. The request of **Ahmad and Whitney Hussein (Owners)**, for property located at **9 Willard Avenue** whereas relief is needed to demolish the existing detached garage and shed and construct a new two-story addition with attached garage which requires the following: 1) Variance from Section 10.521 to allow a) a 7.5 foot rear yard where 20 feet is required; and b) 26.5% building coverage where 25% is the maximum. Said property is located on Assessor Map 149 Lot 24 and lies within the General Residence A (GRA) District. (LU-26-1)

SPEAKING TO THE PETITION [Timestamp 4:27:60]

The owner Alex Hussein was present and reviewed the petition. He said there was not much yard space, so he wanted to remove the rotting garage and shed and replace them with a two-story addition and attached garage. He reviewed the criteria.

[Timestamp 4:31:51 Mr. Rheume verified that there would be no windows in the garage and that the four windows at the top would be higher and smaller than normal. He said it was important because the structure would be close to the neighbor's property line. Mr. Sullivan asked Mr. Hussein what the property's special conditions were that created the unnecessary hardship. Mr. Hussein said the lot was a corner lot, so the driveway entered from the back of the property and there was no way to address the existing garage except to keep it there or move it forward. Vice-Chair Mattson asked if the vegetation around the property was maintained by Mr. Hussein. Mr. Hussein agreed and said the vegetation provided a decent amount of privacy.

Chair Margeson opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD [Timestamp 4:35:09]

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

Mr. Rossi said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said the spirit of the ordinance with regard to setbacks generally pertains to light, space, and air movement between properties. He said the current condition of the property was that there is a structure to be demolished that is more encroaching on the rear yard setback than the proposed new structure, so it is an improvement over current conditions that directly affect achieving the purpose of the ordinance in a positive way. He said substantial justice would be done because there would be no loss to the public by granting the variance. He said granting the variance would not diminish the values of surrounding properties because it would be less encroachment on the rear lot line. He said the design was a pleasant one and looked like it would add to the streetscape and the neighborhood's appearance and have a positive impact on the values of surrounding properties. He said literal enforcement of the provisions of the ordinance will result in an unnecessary hardship. 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. He said those are special conditions that make the application of the setback standard somewhat inappropriate in this case. Mr. Rheume concurred. He said the hardship criteria was the most significant one because the addition was a substantial one. He said the garage's location did not make a lot of sense, but the second floor had a minimum of glass. He said the neighboring property had their driveway on the same side, which would reduce some of the impact on light and

air. He said the overall 26 percent coverage was less than what was there currently and that the applicant was also adding less structure instead of more structure.

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

- B.** The request of **Phoebe Hart LLC (Owner)** and **Blush LLC (Applicant)**, for property located at **404 The Hill, Units 8-3** whereas relief is needed for a personal service business which requires the following: 1) Variance from Section 10.440, Use #7.20 to allow a personal services business where it is not allowed. Said property is located on Assessor Map 118 Lot 26-8 and lies within the Character District 4-L1 (CD4-L1). (LU-26-6)

SPEAKING TO THE PETITION [Timestamp 4:41:55]

The owner Phoebe Hart was present and said she wanted to relocate her personal services business to consolidate operations into one location. She said the new location would allow five treatment rooms instead of four. She said the business would stay as an appointment-only one and that parking would not change. She said there would be no exterior changes except for painting the front door. She reviewed the criteria. She said she was also asking for three signs: a small plaque by the main door, a hanging sign for wayfinding, and a wall-mounted sign on the rear for wayfinding. She said they were modest signs and not internally illuminated.

[Timestamp 4:48:10] Mr. Sullivan asked how the applicant's property was different from the others in The Hill. Ms. Hart said she was only familiar with 408 and 404 The Hill and that the new location would be strictly commercial, unlike the previous location. She said the physical features of the property would not be different because it was already an office building. Mr. Rheume said the Board granted permission the previous year to allow 480 The Hill to continue operating contingent upon being on an appointment-only basis. He asked Ms. Hart if she would be willing to keep it as an appointment-only use, and Ms. Hart agreed.

Chair Margeson opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD [Timestamp 4:50:21]

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

- 1) The use shall be limited to a by-appointment basis only.*

Mr. Rheume seconded.

Mr. Rossi said the history of the applicant's interaction with the Board was relevant to the current application. He said there was an extensive interrogatory session when the applicant first came before the Board regarding the nature of the business and services offered and whether they fit into the neighborhood, and the applicant satisfied the Board that it was an appropriate operation. He said it was the same operation but was just moving next door and just slightly expanding. He said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said there would be no public interest in preventing the business from operating in the neighborhood because it was already there and there would be no impact in moving it one or two doors down. He said substantial justice would be done because there would be no loss to the public by denying the application, particularly since it is a business currently in operation in almost the same location. He said granting the variance would not diminish the values of surrounding properties because it was inconceivable that continuing to operate the same business that had been successfully operated within ten years would suddenly diminish the values of surrounding properties. He said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. He said normally the hardship was based on a unique aspect of the property that differentiates it from the surrounding ones, but there was also the consideration of whether or not the strict application of the ordinance achieves any particular purpose of the ordinance, and in this case it does not. He said all the criteria were satisfied. Mr. Rheume concurred and said it was an unusual situation because in general, The Hill was a component of the CD4-L1 district, and that particular building was not different from the other buildings but was in a pocket surrounded by the CD5 district. He said there was generic parking in the area so people would not be demanding nearby parking. He said the stipulation was important and put the business in the same category as other permitted uses in The Hill, which were appointment-based or had limited hours. He said The Hill was a unique property amongst all the properties in the CD4-L1 district in terms of that.

*The motion **passed** by a vote of 6-1, with Mr. Sullivan voting in opposition.*

- C. The request of **Nathaniel J LeGros (Owner)**, for property located at **140 Summer Street** whereas relief is needed to demolish the existing one-story detached garage and construct a new two-story attached garage which requires the following: 1) Variance from Section 10.521 to allow a) a 4 foot right side yard where 10 feet is required, b) a 4 foot rear yard where 20 feet is required; and c) 39% building coverage where 35% is allowed. Said property is located on Assessor Map 137 Lot 2 and lies within the General Residence C (GRC) District. (LU-26-7)

SPEAKING TO THE PETITION [Timestamp 4:58:15]

The owner Nathaniel LeGros was present along with his designer Chris Kipper and reviewed the petition. He said the new building would be in the same location and would connect to the house. He reviewed the criteria.

[Timestamp 5:04:52] Mr. Rheume asked if the mini wraparound deck over the one-story addition to the back of the house had any connection with the proposed small deck. Mr. LeGros said it did

not. Mr. Rheume asked why the existing garage couldn't be pushed up closer against the house. Mr. Le Gros said he wanted to preserve the garage at that end of the property because it mirrored the property's layout already. Regarding keeping the extension and having the space between the main house and the garage, he said he enjoyed the courtyard aspect of it and that it was consistent with the ones down Chatham Street. Mr. Rheume said it would now be a two-story garage, however. He asked why the proposed garage was longer than the existing one. Mr. LeGros said the additional seven feet was to facilitate the staircase in the back to get to the top floor, as well as a car. He said he also wanted to elaborate on the additional space at the top to have a woodworking woodshop space. Mr. Rossi said Mr. LeGros would not need any of the setback variances if he moved the addition forward a foot or two. Mr. LeGros said he would still need the side yard setbacks. He said the current open space was used as a walkway to get to the funeral home and the church and eliminated his privacy. Mr. Kipper said they worked through the ways to get a woodshop and a garage on the property and preserve the parking and courtyard vibe.

Chair Margeson opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DISCUSSION OF THE BOARD [Timestamp 5:16:43]

Mr. Rheume said if the applicant had a bigger lot and more room in the back, the design would be great, but his concern was that it would be a two-story structure up against a property line where there was a neighboring structure also up against a property line. Mr. Lucas said he walked by the property every day and believed that the design fit in with the neighborhood's character and preserved the owner's privacy. He said it was a challenging lot because it was exposed in all directions. Mr. Rossi said he did not see the property having a hardship that required building it way outside of the footprint of the building area and being so encroaching. Mr. Sullivan agreed.

DECISION OF THE BOARD

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

Mr. Rossi said the reason for his motion was the hardship and whether there was something special about the property that meant it could not be used within the strict confines of the ordinance. He said it would be possible to avoid encroaching on the rear and side setbacks by adjoining the large garage right next to the existing structure without the breezeway. He said the application failed the hardship criteria. Mr. Sullivan concurred and had nothing to add. Vice-Chair Mattson said he liked the design and thought the property had unique conditions. He said the house's location on the property forced it to one side. He said it was a corner lot and that twenty feet on the side near the funeral home was needed. He said he wanted to support the project but also saw that it could be a

stretch to apply the hardship. Mr. Rheaume said he struggled with going all the way to the far end and being that intrusive into the rear setback requirement with a two-story structure. Chair Margeson said she would vote against the motion because wherever the applicant put the garage, there would be problems with the setbacks. She said it was a substantial addition but the corner lot was very irregularly-shaped and could accommodate the garage.

*The motion **failed** by a vote of 3-4, with Mr. Lucas, Mr. Mannle, Vice-Chair Mattson, and Chair Margeson voting in opposition.*

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

Vice-Chair Mattson said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said a good argument was made that the addition would fit in with the character of the neighborhood despite its unique features. He said the Board's concern with the setbacks were about light, air, and privacy. He said granting the variance would not conflict with the purpose of the ordinance because it would be the same residential use but with a single-car garage and workshop addition. He said substantial justice would be done because the benefit to the applicant would not be outweighed by any harm to the general public or others. He said being within the setbacks, the property with its surrounding neighbors and location would not harm the public. He said the values of surrounding properties would not be diminished, noting that the Board heard no testimony to suggest otherwise and that the neighbors were in support. He said literal enforcement of the ordinance would result in an unnecessary hardship due to the special conditions of the property and the combination of factors, including the irregular-shaped corner lot and the existing house on it outside of the typical building envelope. He said the addition would not impose on someone's light, air, and privacy. He said the proposed use was a reasonable one. Mr. Lucas concurred and had nothing to add.

*The motion **passed** by a vote of 4-3, with Mr. Sullivan, Mr. Rossi, and Mr. Rheaume voting in opposition.*

IV. ADJOURNMENT

The meeting adjourned at 12:32 a.m.

Submitted,
Joann Breault
BOA Meeting Minutes Taker