MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

Law Court Docket No. CUM-25-421

PETER L. MURRAY, *et al.*
Appellants

v.

CITY OF PORTLAND
Appellee

and

37 MONTREAL STREET, LLC
Party-in-Interest/Appellee

On Appeal from the
Cumberland County Superior Court
(Docket No. AP-24-03)

BRIEF OF APPELLEE, CITY OF PORTLAND

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STATEMENT OF FACTS AND PROCEDURAL HISTORY

Appellee City of Portland ("City") adopts by reference Appellee/Party-in-Interest 37 Montreal Street, LLC's ("Montreal") recitation of the relevant factual and procedural background in its brief as if fully set forth herein. The City offers the following short supplemental introduction.

This Court is familiar with much of the factual history and procedural background of this case. *See Murray v. City of Portland*, 2023 ME 57, 301 A.3d 777. The Appellants are once again challenging the City of Portland Planning Board's ("Board" or "Planning Board") 2021 approval of Montreal's major site plan application to construct a four-story, twelve-unit residential building on a vacant lot at the corner of Montreal and Willis Street ("Project"). (Bl. Br. 6.)

Since this matter was last before this Court in 2023, the Planning Board has supplemented its 2021 decision with additional findings of fact and conclusions of law on two occasions. (A. 27-39.) Following this Court's remand order, the Board voted on December 12, 2023 to adopt a revised approval letter which added incorporated supplementary findings from a staff report dated November 22, 2023.[1] (A. 27-31.) The Appellants filed a second Rule 80B Complaint on January 9, 2024.

[1] The approval letter is included in the Appendix at pages 27-31, but the Planning Board report, which is listed as an attachment and incorporated by reference in paragraphs 1-3 on the top of page 28 of the Appendix, is missing. The Planning Board report is included in the Supplemental Administrative Record (Supp. AR. 10-17.)

(22-26.) After briefing and oral argument, the Superior Court (Cumberland County, *O'Neil*, *J.*) remanded the matter to the Planning Board once more and retained jurisdiction on the Appellants' Rule 80B appeal. *Murray v. City of Portland*, AP-24-03, 2024 Me. Super. LEXIS 25, at *12-13 (Sept 30, 2024).

Pursuant to the Superior Court's 2024 remand order, on January 10, 2025 the Board voted (6-0) to approve a second supplement to its 2021 approval of the Project which includes additional findings of fact and conclusions of law related to height, setbacks and Section 14-526(d)(5)(b) of the City's Land Use Code. (A. 32-39.) Board Member Austin Smith, who was the sole dissenting vote in 2023, voted to adopt the additional findings and approve the Project in 2025. (A. 97, 140.) On August 18, 2025, the Superior Court (*O'Neil*, *J.*) denied the Appellants' 80B appeal and affirmed the Planning Board's approval of the Project. (A. 14-21.)

The Appellants have sought review by this Court, again.

ISSUES PRESENTED

I. WHETHER THE PLANNING BOARD APPROPRIATELY WEIGHED AND EVALUATED THE TESTIMONY OF THE CITY'S ZONING ADMINISTRATOR.

II. WHETHER THE PLANNING BOARD'S INTERPRETATION OF "GRADE" WAS PROPER.

III. WHETHER THE PROJECT MEETS ALL SETBACK REQUIREMENTS.

IV. WHETHER THE JANUARY 10, 2025 HISTORIC PRESERVATION ADVISORY MEMORANDUM COMPLIES WITH SECTION 14-526(D)(5)(b).

V. WHETHER THE BOARD'S FINDING THAT THE PROJECT MEETS SECTION 14-526 (d)(5)(b) IS SUPPORTED BY SUFFICIENT EVIDENCE IN THE RECORD.

STANDARD OF REVIEW

This Court reviews the Planning Board's approval directly for abuse of discretion, errors of law, or findings not supported by substantial evidence in the record. *Phaiah v. Town of Fayette,* 2005 ME 20, ¶ 8, 866 A.2d 863. This Court reviews "factual findings of the Planning Board with deference and may not substitute [its] own judgment for that of the Board." *Gensheimer v. Town of Phippsburg,* 2005 ME 22, ¶ 17, 868 A.2d 161. The Planning Board's approval will remain undisturbed unless this Court finds there is no competent evidence in the record to support it. *Id.* (citing *Thacker v. Konover Dev. Corp.,* 2003 ME 30, ¶ 8, 818 A.2d 1013, 1017.)

Interpretation of the local ordinance is a question of law reviewed *de novo*. *Marton v. Town of Ogunquit*, 2000 ME 166, ¶ 6, 759 A.2d 704. This Court interprets the ordinance by "examining the plain meaning of the language" and construes terms "reasonably with regard to both the objectives sought to be obtained and the general structure of the ordinance as a whole." *Gerald v. Town of York*, 589 A.2d 1272 (Me. 1991); *Friends of Congress Square Park v. City of Portland*, 2014 ME 63, ¶ 9, 91 A.3d 601. This Court must give "substantial deference" to a municipal board's factual findings and characterizations when determining what satisfies an ordinance's definitions and standards. *Bizier v. Town of Turner*, 2011 ME 116, ¶ 8,

32 A.3d 1048; *Rudolph v. Golick,* 2010 ME 106, ¶ 8, 8 A.3d 684 (citing *Jordan v. City of Ellsworth*, 2003 ME 82, ¶¶ 8-9, 828 A.2d 768).

SUMMARY OF THE ARGUMENT

The City's Planning Board has now reviewed Montreal's application three separate occasions and has reached the same conclusion each time. The updated record in front of this Court shows that the Planning Board was unequivocal in its approval. The strength of the evidentiary record is underscored by the fact that the Board's only dissenting vote in 2023 voted to approve the Project in 2025. All of the Board members expressed that they were more convinced, now more than ever, that their decision to approve the Project was proper.

The Board's third round of deliberations was lengthy and meaningful. The Board's written findings and conclusions are thorough, reasonable and more than sufficient to allow for meaningful judicial review. The record leaves no stone unturned. It is no mystery as to why and how the Board reached the conclusions it did as to every detail it analyzed. After careful review of the entire record and the Board's updated findings and conclusions, the City is certain this Court will be compelled to affirm the Planning Board's approval of the Project.

ARGUMENT

The City hereby adopts the arguments made by Party-in-Interest/Appellee, 37 Montreal Street, LLC in its brief as if set forth fully herein. The City writes separately to address the following arguments.

I. The Planning Board Appropriately Evaluated the Zoning Administrator's Testimony as Part of the Cumulative Record Evidence.[2]

The Appellants argue that the Planning Board failed to exercise its own judgment in construing the terms "grade" and "structure" and instead "followed the Zoning Administrator's directions because they thought they had to" resulting in a "complete substitution of the judgment of the Zoning Administrator for that of the Board." (Bl. Br. 21.) It is true that the Board heard testimony on December 10, 2025 from the City's Zoning Administrator, Ms. Ann Machado. (A. 111-113.) However, Ms. Machado's testimony is one small part of a comprehensive record and only

[2] The Appellants also argue that this Board's interpretation is unfair because it failed to "put the public on notice." (Pl's Br. 24.) The Board addressed concerns about notice and due process in its findings #11-12 regarding height and in findings # 14 and #11 in its January 10, 2025 supplemental findings (A. 34, 36-37) and Montreal has addressed the Appellant's argument on Page 10 of their brief. The bedrocks of procedural due process in the administrative context are notice and an opportunity to be heard. *Maddocks v. Unemployment Ins. Comm'n*, 2001 ME 60, ¶ 7, 768 A.2d 1023. The cumulative effect of over 20 years of public proceedings and documents as well as the undisputed consistency by which the City's approaches height and setbacks provide sufficient notice to members of the public as to the general practice of the Planning Board. Additionally, any lingering uncertainty around these issues has been resolved because the Portland City Council codified the City's longstanding practices related to the determination of grade and the applicability of setbacks to retaining walls. (A. 33, 36.) Effective December 4, 2024, the definition of "setback" in Section 7.2 of the City's Land Use Code specifically excludes retaining walls. Also, "grade, average" is defined as "the average of elevation measurements at consistent intervals of no less than three and no more than ten feet around the entire perimeter of a structure. Measurements shall be taken at the foundation of the structure where it meets the grade *after* construction." *See* Ch. 14, § 7.2 Portland City Code of Ordinances (December 4, 2024) (emphasis added).

informed a portion of the Board's findings as to grade and setbacks. For instance, the Board's written findings include thirteen (13) separate findings related to grade and height, but only findings 7 through 9 rely on portions of the Zoning Administrator's testimony. (A. 33-34.) Similarly, the Board only cited Ms. Machado's testimony in findings 6 through 9 of its 14 findings related to setbacks. (A. 36.) Those findings are not an exhaustive compilation of the Board's deliberations about either of those issues. The Board made additional findings related to the plain language and context of the ordinance as well as its own past practices. The Appellants' contention that the Board deferred entirely to Ms. Machado is baseless because it ignores the balance of their oral deliberations and written findings and conclusions, the full scope of which is borne out in the meeting transcripts and the Board's comprehensive written findings.

"The Planning Board, as factfinder, is allowed to weigh evidence and make a decision based on its perception of the evidence." *Sproul v. Town of Boothbay Harbor*, 2000 ME 30, ¶ 9, 746 A.2d 368 (citing *Veilleux v. City of Augusta*, 684 A.2d 413, 415. (Me. 1996). The Board was well within its discretion to weigh the evidence in the manner it did. Here, the Board determined Ms. Machado's testimony was "unrebutted and compelling" and "informed" their conclusions related to the most reasonable method for construing grade when calculated height and the applicability of setbacks to retaining walls. (A. 33-36.) The Appellants do not point to anything

in the record that undermines the reliability of Ms. Machado's testimony that would compel this Court to disturb that finding. Therefore, the Board did not err when it evaluated Ms. Machado's testimony and reached a conclusion which incorporated and relied on portions of her testimony.

II. The Planning Board's Interpretation of "Grade" Was Proper.

In its January 14, 2025 supplemental findings and conclusions, the Planning Board made the following determination related to the term "grade" as used in the City's Land Use Code:

1. Section 14-47 of the applicable Land Use Code defined "building height [of]" has "[t]he vertical measurement from grade, or the predevelopment grade on the islands, to the highest point of the roof beams in flat roofs."

2. "Grade" was not otherwise defined in Section 14-47 or elsewhere in the Land Use Code.

3. "Pre-development grade," which was applicable on the City's islands, was defined in Section 14-47 as "average grade, existing on October 1, 2000 at the corners of the foundation of the proposed structure."

4. The Planning Board must then determine how to interpret "grade" as it relates to this project which is on the mainland.

5. The Board is first informed by the plain language of the ordinance which distinguishes between "grade" and "pre-development grade." The Board further finds it reasonable that "pre-development grade" is specifically called out because it is exclusively applicable to the islands and does not apply to development on the mainland. Therefore, it makes practical sense that grade on the mainland shall be interpreted to be "post-development grade," or after the proposed development occurs.

6. The Board further finds that based on the use of "average grade" in the definition of "pre-development grade," it is reasonable that post-development grade also be an average measurement. (A. 33.)

This Court will "evaluate the plain meaning of the Ordinance and, if the meaning is clear, need not look beyond the words themselves." *Fryeburg Trust v. Town of Fryeburg*, 2016 ME 174, ¶ 5, 151 A.3d 933 (quotations marks omitted). "All words in [an ordinance] are to be given meaning, and none are to be treated as surplusage if they can be reasonably construed." *Zappia v. Town of Old Orchard Beach*, 2022 ME 15, ¶ 10, 271 A.3d 753 (quoting *Cobb v. Bd. Of Counseling Pros. Licensure*, 2006 ME 48, ¶11, 896 A.2d 271.) The Court also shall "construe the terms of an ordinance reasonably, considering its purposes and structure and to avoid absurd or illogical results." *Olson v. Town of Yarmouth*, 2018 ME 27, ¶ 11, 179 A.3d 920 (quoting *Fryeburg,* 2016 ME at ¶ 5)

The definition of "building, height of" clearly distinguishes between "grade" and "pre-development grade" by making "pre-development grade" applicable to the islands only. (A. 43.) The different application signals that the two terms "pre-development grade" and "grade" carry distinct meanings. Nevertheless, the Appellants argue that the terms should be construed the same so "grade" would mean the "existing ground surface of the project site at the time the application is submitted." (Bl. Br. 26.) That interpretation is not supported by the plain language of the Land Use Ordinance and is inconsistent with the context provided in the

definition of height. Indeed, the Appellants approach would improperly render several words, including "grade" and "on the islands" in the definition of "building, height of" mere surplusage. *See Zappia,* 2022 ME at ¶ 10.

On the other hand, it is entirely reasonable to infer, as the Board did in this matter, that the ordinance draws a clear difference between the two terms. From there, because "pre-development grade" is only applied to the islands, it makes practical sense that it would not apply on the mainland. If it does not apply in the mainland, then there must be an alternative approach to development in those areas.

To honor the clear distinction demanded by the Land Use Code, the Board reasonably determined that "grade" should be construed to mean "*post*-development grade." The Board's interpretation of "grade" is supported by the plain language of the ordinance and is reasonable considering the context. The Board did not commit legal error when it determined that grade on the mainland shall be distinct from "pre-development grade" and therefore calculated by averaging the post-development grade around the proposed building, and not the conditions at some point in time prior to development.

III. The Project Meets All Applicable Setback Requirements.

In its January 14, 2025 supplemental findings, the Planning Board addressed in great detail the applicability of setback requirements to retaining walls. (A. 35-37.) During its deliberations and in its findings, the Board reviewed the definitions

of "setback" and "structure" in Section 14-47. (A. 35, 124-126.) It also paid particular attention to the dimensional requirements for the R-6 Zone and the Munjoy Hill Neighborhood Conservation Overlay District ("MHNCOD"). (A. 35, 52-54, 124-126.) The Board astutely noted that the zone-specific dimensional requirements, which apply to a "building," "accessory structure" or a "principal structure" were more instructive than the standalone definitions of "setback" and "structure" when interpreting how to apply setback requirements to the Project. (A. 35, 124-125.) Specifically, Board Member Silk articulated that when he looked at the R-6 and MHNCOD, the setback requirements almost uniformly reference "buildings," not structures. (A. 124-125.) He explained:

> I am looking at the R6 and [MHNCOD] . . . when it is talking about setbacks, it uses the phrase. . . It says building of a height a certain distance. Minimum side yard setback on a side street, it shows a building – a building, and it's showing what a setback is. And when it talks about minimum rear setback, it talks about buildings. So for me, I'll to the R6 next, but under the more restrictive controls of the two, the specific guidelines for use or standards for us on setbacks refers to buildings. It doesn't refer to structures. It refers to buildings… And then if I go to the R6, the R6 talks about minimum yard – minimum yard setbacks for principal and accessory structures. So it talks about principal. It doesn't say all structures. It says principal and accessory structures.

(A. 125.) The dimensional standards for the MHNCOD are found in Section 14-140.5 of the Land Use Code (A. 50-53) and dimensional standards for the R-6 zone are in Section 14-139. (AR 478.) The Board unanimously agreed that this distinction

highlighted by Board Member Silk was important in its analysis and incorporated it into findings #2 through #5 related to setbacks. (A. 35.)

Ms. Machado's testimony also informed the Board that the purpose of a retaining wall is to hold back earth in order to stabilize a lot before construction. (A. 36, 112.) To be effective, those walls frequently need to be installed on or near the boundary of the property. (A. 36.) From there, the Board assessed what the result would be if they adopted the Appellants' approach and found that retaining walls must meet setbacks. In that case, as Board Member Silk noted, "when I went back to [the staff] memo, it was explaining that the setbacks weren't just for any structure because it makes no sense to say that you can't put a stone wall on your boundary line or a fence…It's absurd. It makes no sense. . . and to me a retaining wall as presented here is no difference [*sic*] than a fence or a stonewall." (A. 125.) Board Member Stanley added that they found "there is [even more] evidence in play today to – to prove that the retaining wall has been interpreted this way and are not -- they don't apply to setbacks. They are often on lot lines. We know how buildings get built. We know that also needs to happen in so many cases." (A. 124.) In Ms. Machado's words, she could not "imagine what our city would look like if retaining walls were subject to setbacks." (A. 125.) The Board found that applying setbacks to retaining walls would create an absurd result because "it would make many lots, particularly small and sloped or uneven lots, very difficult or impossible to develop." (A. 36.)

Once again, the Planning Board exercised appropriate discretion to interpret the setback dimensional requirement in a reasonable way which is compatible with the objective and the structure of the ordinance as a whole. The Board's ultimate characterization is also supported by ample evidence in the record including testimony from Ms. Machado as well as past examples of projects which included retaining walls within setbacks that were approved by the Planning Board. (A. 36, 112-113, 177-179.) Even more examples were provided in Montreal's presentation and during Tim Wells' testimony. (A. 115; 171-193.) Ms. Machado also testified that over the 20 years she has been employed by the City, retaining walls have not been required to meet setbacks. (A. 36, 125.) This approach has been applied regardless of whether the retaining wall served as support for the foundation of the building or was separate from the building altogether. (A. 36, 125.) Because a retaining wall that is holding back earth is not a "building" or a "principal" or "accessory" structure, and because applying setback requirements to retaining walls would create an absurd result, the Board correctly determined that setback requirements do not apply to retaining walls.

Having determined that the retaining walls need not meet the applicable setback requirements, the Board found, based on Montreal's submitted plans, that "the proposed building would have a minimum front setback of 5 feet, minimum side yard setbacks of approximately 10.3 feet, a minimum side setback on a side

street of 5 feet, and a minimum rear yard setback of approximately 31.5 feet." (A. 37.) Based on those measurements, the Board concluded that the Project "meets the applicable setback requirements for the buildings located in the R-6 zone and MHNCOD." (A. 37.) The Appellants do not challenge the Board's finding that proposed building meets all of the applicable setbacks.

IV. The January 10, 2025 Historic Preservation Advisory Review Memorandum Complies with Section 14-526(d)(5)(b).

After four years of demanding an even more comprehensive memorandum from the City's Historic Preservation Staff, the Appellants now find themselves opposed to the document they sought because its analysis and conclusions do not support their arguments on appeal. (Bl. Br. 39-45.) Section 14-526(d)(5)(b), which has since been repealed from the City's Land Use Code, required the following:

> Development adjacent to designated landmarks, historic districts or historic landscape districts: when any part of a proposed development is within one hundred (100) feet of any designated landmark, historic district, or historic landscape district, such development shall be generally compatible with the major character-defining elements of the landmark or portion of the district in the immediate vicinity of the proposed development. Character defining elements of landmarks and historic districts are identified in the historic resources inventory and respective historic district designation reports. For the purposes of this provision, "compatible" design shall be defined as design which respects the established building patterns and visual characteristics that exist in a given setting and, at the same time, is a distinct product of its own time. To aid the planning board in its deliberations, historic preservation staff shall provide a written analysis of the proposed development's immediate context, identifying the major character-defining elements and any established building patterns that characterize the context.

(A. 67-68.) The Board previously received a design review memorandum in 2021 co-authored by a now-retired member of the City's Historic Preservation Staff, Deborah Andrews. (A.162-164.) At the January 14, 2025 Planning Board meeting, at least two Board members thought the record could benefit from a memorandum that more explicitly outlines the character-defining elements and established building patterns as set forth in Section 14-526(d)(5)(b), so that their supplemental findings would "be as tight as possible." (A. 132.) The Board voted unanimously to table the hearing until January 14, 2025 to "allow [City] staff time to provide a supplemental report" and so the Board can reconvene and review the memorandum. (A. 132.)

The City's Historic Preservation Program Manager, Evan Schueckler, submitted the updated Historical Preservation Advisory Review Memo ("2025 HP Memo") on January 10, 2025. (A. 142-152.) The 2025 HP Memo spends four pages summarizing the character-defining elements of the Munjoy Hill Historic District (A. 143-146) and four additional pages summarizing the elements more specific to the immediate context of the project. (A. 147-150.) The 2025 HP Memo next provides an analysis of how the Project is compatible with the character-defining elements of the immediate context. (A. 150-152.) The 2025 HP Memo also clearly aided the Board in its deliberations in part by confirming that the findings and

conclusions it reached in 2021 still ring true at present. (A. 37-38.) As Board Member Silk explained:

> I'm comfortable that we made the finding initially correctly. I'm comfortable that the second time we made the finding we made it correctly. And I think now that we have without doubt a memo that is from HP, I'm comfortable that the prior two findings that we made were correct.

(A. 137.) Board Member Murphy reiterated that he agreed with the conclusions in the report and felt that the memo solidified the Board's prior two approvals. (A. 136.) Board Member Stanley echoed that while the 2025 HP Memo is "not necessarily new information…it clarifies and makes it as solid as we can put it in writing." (A. 136.) The Board explicitly noted in its supplemental findings that it had "received and reviewed a report from the City's Historic Preservation Manager, Evan Schueckler, dated January 10, 2025 which has aided the Board's deliberations and informed the findings and conclusions herein." (A. 37.)

The Appellants next argue that the 2025 HP Memo does not comport with Section 14-526(d)(5)(b) because the document was "too late" and had not "aided" the Board because they Board had "already repeatedly found the Project to be compatible with the Historic District." (Bl. Br. 39.) The Board's decision to receive additional evidence on remand was not inconsistent with the Land Use Code, Maine law, Maine Rules of Civil Procedure or the Remand Order from this Court. This Court ordered the following on September 30, 2024:

> "The matter is remanded to the Planning Board to make sufficient findings of fact regarding the height, setback and design-review requirements. The Planning Board must make clear findings to support its reasoning and conclusions.

Murray, 2024 Me. Super. LEXIS 25 at *12. Absent a court order or other statutory directive, appeals of governmental actions taken pursuant to Rule 80B do not stay administrative decisions. M.R. Civ. P. 80B(b). The Plaintiffs cite no statutory authority in their brief that prohibited the Board from receiving additional evidence and no order staying the administrative process was ever entered by any court. Although the Superior Court retained jurisdiction after the most recent remand, it did not direct the Planning Board to limit any further proceedings to the record that existed in December 2021 or otherwise limit the Board's authority to act on the application. The Superior Court's retention of jurisdiction simply offered the parties administrative efficiency, and avoided the need for the Plaintiffs to file a new Rule 80B appeal, but did not otherwise restrict the Board's ability to supplement the administrative record. Therefore, nothing prohibited the Planning Board from reopening the record in this matter to receive additional information, including the 2025 HP Memo.

The Appellants argue that the addition of the 2025 HP Memo is nonetheless improper because "deliberations [had] already taken place" so it could not have "aided" the Board in its discussions. (Bl. Br. 39.) The Board took an affirmative vote to reopen the record and accept new evidence related to the three issues on remand,

including the Project's compliance with Section 14-526(d)(5)(b). (A. 109.) Because the Board received, reviewed and analyzed new evidence on all three of those issues, it also deliberated how that new evidence impacted their findings and conclusions with respect to those issues. Just because the Board reached the same conclusion in 2025 as it did in 2021 does not mean that the report was not helpful in reaching its decision. The deliberations on Section 14-526(d)(5)(b) were ongoing and the Board's decision is clear that the 2025 HP Memo "aided" the Board in its deliberations. (A. 37.)

Finally, in a particularly desperate allegation and in a tired effort to exalt form over substance, the Appellants argue that the 2025 HP Memo does not comply with Section 14-526(d)(5)(b) because it was co-authored by the City's Director of Planning and Urban Development, Mr. Kevin Kraft. (Bl. Br. 39-40.) The Appellants assert that Mr. Kraft's name on the report undermines the "independence" of the review by the City's historic preservation staff member." (Bl. Br. 39-40.) The Appellants go further to assert, without meaningful support in the record, that Mr. Kraft's contribution was improper because he "has been a vociferous supporter of this project from the beginning" and "[t]here is no way of assessing what influence the Planning Director had on the recommendations or telling what portions of the memo were authored by him rather than the historic preservation staff member." (Bl. Br. 40.)

There is nothing in Section 14-526(d)(5)(b) that requires the City's Historic Preservation staff member to be the sole author of the report. (A. 67-68.) Also, it makes practical sense that Mr. Kraft would co-author the memorandum because the City's Historic Preservation program is a division within the City's Planning and Urban Development Department. Therefore, including Mr. Kraft makes operational sense as the leader of the Department and therefore the overseer of the Historic Preservation program. There is also no is credible evidence in the record to suggest that Mr. Kraft exhibited any bias or influence which would otherwise have compromised the 2025 HP Memo. The Appellants' claim of partiality or malfeasance by Mr. Kraft is baseless.

For all of these reasons, the 2025 HP Memo included all of the components required by Section 14-526(d)(5)(b). It provided a thorough analysis of the proposed development's immediate context, identified the major character-defining elements of the district, established building patterns that characterize the context, and aided the Board in its deliberations. The Appellants' challenges to the form and timing of the 2025 HP Memo are unavailing.

V. The Board's Finding that the Project Meets Section 14-526(d)(5)(d) is Supported by Sufficient Evidence in the Record.

The Appellants' dissatisfaction with the contents of the 2025 HP Memo likewise does not give rise to meritorious arguments on appeal. The 2025 HP Memo

is replete with details about the character defining elements of the Munjoy Hill Historical District with particular attention to the immediate context of the Project. In addition, the 2025 HP Memo called out three specific examples of three contributing buildings in the immediate context including "52, 63, and 64 Montreal Street which are excellent examples of the densely-built triple-deckers typical of Munjoy Hill's late 19-century and early twentieth century development." (A. 149.) Specifically, the 2025 HP Memo offered the following analysis of the compatibility of Montreal's project to the immediate context:

> While the proposed development at 19 Willis Street is larger than the historic buildings of the Munjoy Hill Historic District, its design includes a number of elements that are pulled from several nearby contributing buildings, in particular the triple-decker apartment buildings that are common to the district, and relating the proposed building to the surrounding context.
>
> The overall form of the building, rising sheer from along Willis and Montreal Streets is typical of many buildings in the context. Buildings in the district are typically located close to the street, and front yards are modest where they exist at all. Most buildings, especially the larger structures, rise sheer without stepbacks or other articulation to break-up their height. The proposed structure also features a flat roof articulated by a projecting cornice, a common feature of the larger multiunit buildings in the context.
>
> * * *
>
> The proposed development also features a series of stacked balconies at the rear, off of Montreal Street. Stacked rear porches were a common feature of houses throughout the historic district, especially on denser apartment buildings such as the triple-deckers where these porches provided each

unit with a modest outdoor space. A small number of contributing buildings even feature stacked front porches.

(A. 150, 152.) The thorough background details and specific examples provided in the 2025 HP Memo are more than enough to support the Board's following findings related to Section 14-526(d)(5)(b):

4. The Board finds that the portion of the Munjoy Hill Historic District in the immediate vicinity of the proposed development includes the west side of Willis Street and Montreal Street east of Willis Street. The Board adopts Mr. Schueckler's recitation of the character-defining elements of that immediate context as if set forth completely herein.

5. The Board finds that the portion of the Munjoy Hill Historic District in the immediate vicinity of the proposed development includes the west side of Willis Street and Montreal Street east of Willis Street. The Board adopts Mr. Schueckler's recitation of the character-defining elements of that immediate context as if set forth completely herein.

6. The Board finds that like other multi-unit, three story buildings in the immediate context, the proposed project also has similar building patterns insofar as it is set close to the street, rises sheer from the street, [has] a flat roof articulated by a projecting cornice and arrangement of windows and stacked balconies all while being a product of its own time.

(A. 38.) A Board's finding is not deficient "merely because two inconsistent conclusions can be drawn from the evidence." *Friends of Lamoine v. Town of Lamoine*, 2020 ME 70, ¶ 21, 234 A.3d 214.

Lastly, the Appellants seek to invalidate the Board's approval by alleging that a Board member improperly relied on his personal observations in the neighborhood

to determine compatibility of the Project. (Bl. Br. 37-38.) The Appellants improperly rely on *City of Biddeford v. Adams* to support its contention. (Bl. Br. 38.) In *Adams,* a member of the City's Board of Assessment Review visited properties that were subject to tax abatement appeals immediately after the Board closed the evidentiary hearing related to the properties and before it began deliberations on the appeals. 1999 ME 49, ¶7, 727 A.2d 346. The Board member's site visit was without notice to the applicants or other Board members. *Id.*

In a poor attempt to draw a comparison, the Appellants point to an anecdote from a Board member in this matter who indicated that he had walked in the neighborhood "when [the Board] first looked at this site plan." (A. 136.) A walk that a Board member took over four years ago is not analogous to a site visit taken immediately prior deliberations on a matter for the purpose of collecting additional extrinsic evidence which was the case in *Adams*. Here, the Board member is reflecting on his personal familiarity with the neighborhood based on a walk he took years ago, presumably before any public hearing took place in this matter. It is well established that personal knowledge, including knowledge of a location and its surrounding area, may be considered by members of a planning board. *See Lippoth v. Zoning Bd. Of App., City of So. Portland*, 311 A.2d 552, 557 (Me. 1973); *Pine Tree Tel & Tel. Co. v. Town of Gray*, 631 A.2d 55, 56 (Me. 1993.) The Appellants' attempt to invalidate the Board's decision on those grounds is one last ditch effort to

upend a thorough and well-founded decision by the Planning Board which should be summarily rejected by this Court.

CONCLUSION

For all of the reasons detailed herein, in addition to the arguments raised in Montreal's Brief which had been incorporated herein by reference, the City is sure that the Board's supplemental findings and conclusions will withstand the challenges raised by the Appellants. The City respectfully requests that this Court affirm the Planning Board's decision.

Dated: January 2, 2026

Respectfully submitted,

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