

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

7:00 P.M.

July 27, 2021

MEMBERS PRESENT: Chairman David Rheaume Vice-Chairman Peter McDonell, Jim Lee, Christopher Mulligan, Arthur Parrott, Alternates Chase Hagaman and Phyllis Eldridge

MEMBERS EXCUSED: David MacDonald, Elizabeth Margeson

ALSO PRESENT: Peter Stith, Planning Department

Alternates Chase Hagaman and Phyllis Eldridge took voting seats for the evening.

Chairman Rheaume said the applicants for Petitions F, G, and J requested postponements.

It was moved, seconded, and passed unanimously to take Petitions F, G, and J out of order. (See Petitions F, G, and J).

I. OLD BUSINESS

A) Request for extension regarding 187 McDonough Street.

Chairman Rheaume said the Board granted relief in August 2019 for the applicant, who had two years to obtain a building permit but requested an additional year due to issues like COVID-19, labor shortages, and material backlogs.

DECISION OF THE BOARD

*Vice-Chair McDonell moved to **grant** the extension, seconded by Mr. Hagaman.*

Vice-Chair McDonell said the ordinance allowed for that kind of request and that the reason was reasonable. Mr. Hagaman concurred.

*The motion **passed** by unanimous vote, 7-0.*

- B) Request of The Elizabeth B. Larsen Trust of 2012, Owner,** for the property located at **668 Middle Street** whereas relief was needed from the Zoning Ordinance to subdivide lot into three lots which requires the following: 1) A Variance from Section 10.521 to allow 114' and 100' of frontage on a private way where 100' of frontage on a formally accepted street or other road approved by the Planning Board and constructed to City

subdivision standards. 2) A Variance from Section 10.521 to allow 69.83' of frontage on Middle Street where 100 feet is required. 3) A Variance from Section 10.512 to allow construction of a structure on a lot with access to a private right of way. Said property is shown on Assessor Map 147 Lot 18 and lies within the General Residence A (GRA) District.

SPEAKING TO THE PETITION

Attorney Tim Phoenix was present on behalf of the applicant, with Mike Garrepy of Garrepy Planning Consultants. Attorney Phoenix said the lot was large and abutted different areas of zoning and the variances were required because the frontage on Middle Street couldn't change and Chevrolet Avenue was private. He said all the subdivision requirements were otherwise met.

Mr. Hagaman asked the reason for the triangle on Lot 3. Mr. Garrepy said it was to maintain access to the carriage house via Middle Street and a driveway. Mr. Hagaman asked if there were standards for a driveway or access points that wouldn't apply because Chevrolet Avenue wasn't a public road. Mr. Garrepy said he wasn't aware of it. He said they could build two houses on both lots requiring additional variances, and the intent was to build two duplexes that would meet all setbacks. Chairman Rheume noted that there was no request in the application to construct a structure on a lot with a private accessway. Attorney Phoenix said if the Board granted it conditionally on the new construction not requiring further zoning relief, the applicant would return if they wanted to build. Mr. Mulligan asked what the plan to access Chevrolet Avenue was and if the applicant had any easements or rights to curb cuts. Attorney Phoenix said the project was fronting on a private way and people had the right to develop their property, and the public was using the road to access their lots. Mr. Garrepy said the actual pavement of Chevrolet Avenue was on the applicant's parcel and they had a 30-ft right-of-way. Mr. Hagaman asked who would maintain Chevrolet Avenue. Mr. Stith said the City plowed the road and was in the process of seeking easements for sidewalks on the opposite side and that they were interested in an easement from one of the lots with the triangular portion of pavement.

Chairman Rheume opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one was present to speak, and the Chair closed the public hearing.

DECISION OF THE BOARD

Mr. Hagaman asked if there were concerns that the process of obtaining easements could impact the actual frontage of where the property line might go. Chairman Rheume said it could but that the petition had to go before the Planning Board and the Technical Advisory Committee, who would have additional concerns along those lines. It was further discussed.

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

Vice-Chair McDonell said the lot was very large, with frontage on Middle Street and Chevrolet Avenue, and the variances requested were in two parts. He said the Middle Street request was for less frontage than required and was reasonable because it existed and had been in use, so he saw no concerns with approving it. He said the other two frontages required would meet the requirements if Chevrolet Avenue was a public way, but it operated as though it was a public way, so the frontage request as well as the request to put a structure on a lot with a private accessway were reasonable. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He saw no conflict with the purposes of the ordinance in allowing single-family or duplexes on the two proposed lots, with access via Chevrolet Avenue, and said it would not alter the essential character of the neighborhood or threaten the public's health, safety, or welfare. Substantial justice would be done because it would be a benefit to the applicant and the Board had heard of no harm to the general public. He said granting the variances would not diminish the values of surrounding properties, noting that nothing was heard and similar relief was granted next door to the development. He said literal enforcement of the ordinance would result in unnecessary hardship because the property had special conditions of being a large lot with frontage on both streets, one of which was a private way, and those special conditions distinguished it from others in the area, so he saw no fair and substantial relationship between the purpose of the ordinance and its application to the property. He said the proposed use was reasonable and the variances should be granted.

Mr. Mulligan concurred. He said the issues regarding Chevrolet Avenue being private rather than public were issues for the applicant. He said Chevrolet Avenue had acted as a public way for some time and there had been a substantial number of additional households introduced into the neighborhood that had access to it. He said it seemed to be working out fine and that a minimal increase of density in that area wouldn't have any effect. Chairman Rheume said he was torn but would support the motion. He said he was still concerned about granting the ability to have a structure that the Board had no idea about constructed on the lot and he hoped the City would figure out the frontage issue on Chevrolet Avenue. He agreed that the neighborhood was in significant transition and the opportunity to have a few additional structures on the opposite side of the street would begin to complete that passageway and add to the residential feel of that area.

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

Mr. Mulligan was recused from the following petition.

- C) Request of **Cate Street Development LLC, Owner**, for the property located at **428 US Route 1 Bypass** whereas relief was needed from the Zoning Ordinance to replace two existing free-standing signs with new signs for mixed-use development which requires the following: 1) A Variance from Section 10.1251.20 to allow a 388.5 square foot sign where 100 square feet is the maximum allowed. 2) A Variance from Section 10.1251.20 to allow a 60 square foot secondary sign where 40 square feet is the maximum allowed. Said property is shown on Assessor Map 172 Lot 1 and lies within the Gateway Neighborhood Mixed Use Corridor (G1) District.

SPEAKING TO THE PETITION

Attorney John Bosen was present on behalf of the applicant, along with project engineer Gregg Mikolaities and Brandon Currier of Bartlett Signs. Attorney Bosen reviewed the petition, noting that the new development was behind the U-Haul facility and had two points of access, so it was important to have effective signage. He described the two requested signs and noted that the design elements of the major sign pushed it beyond what was allowed dimensionally.

Vice-Chair McDonell asked how tall the U-Haul sign was. Mr. Currier said it was around 20-25 feet. He said the larger of the two proposed signs was 14 feet off grade and the other one was 10 feet high. Vice-Chair McDonell said the photo showed the sign as having a lot of open space below it, but the plan didn't. Mr. Currier said there were multiple revisions throughout the process and the visual representation was a bit off, but the panels would be blank until they were filled. In response to Mr. Hagaman's questions, Attorney Bosen said he reached out to the U-Haul owner several times but got no response, and the retail commercial building would have tenant signage on it as well. Chairman Rheume asked if the other signage on the lot would be compliant with the zoning requirements. Attorney Bosen agreed. In response to other questions, he said the new street would be Hodgson Way. Mr. Currier said the lighting at the base of the sign would conform to the City's lighting standards. Mr. Mikolaities said they worked with landscape architects to put low vegetation at the base of the signage so that the sign would be visible and that the sign for the businesses further up the road was adjusted so that it would be seen. He said the sign indicating where people would turn for residential and commercial access would be simple and tasteful.

Chairman Rheume opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one was present to speak, and Chairman Rheume closed the public hearing.

DISCUSSION AND DECISION OF THE BOARD

Mr. Lee said the sign's design would make it stand out so that no one would have trouble finding the property. Chairman Rheume agreed and said the applicant could have just re-used the Frank Jones sign, but a low-to-the-ground sign was in the public's interest to reduce higher visual clutter that was prevalent along the Route One Bypass. He said the rest of the sign could be construed as art due to its decorative elements but wouldn't have the visual impact of a major sign with bright colors that would distract drivers. He said the second sign would allow the northbound traffic an opportunity to see what businesses were in the large block and the southbound traffic would be fine.

*Mr. Hagaman moved to **grant** the variances as presented, and Mr. Lee seconded.*

Mr. Hagaman said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance, would not alter the essential character of the neighborhood or threaten the public's health, safety, or welfare. He said the signage would improve public safety by being directional and indicating what tenants and businesses were on the property before drivers might go past it and have to engage in a dangerous u-turn down the road or add congestion on the circle as they looped back toward the property. He said substantial justice

would be done because there would be no gain to the public that would outweigh any loss to the applicant. He said the values of surrounding properties would not be diminished, noting that there was no evidence that allowing the signage to be substantially greater than what was usually permitted would result in any loss of property values for surrounding properties and that the area was more of a commercial one that included an auto dealership, an inn, and the U-Haul company, so it seemed like an appropriate area for that type of signage, especially seeing how large the property was. He said the property had lots of special conditions, including a large lot, buildings being set back from the Route One Bypass, and multiple types of uses on the property, and it was important to have directional indicators for the property itself, given the nature of the traffic. He said there was no fair and substantial relationship between the purposes of the ordinance and their specific application to the property and that the proposed use was a reasonable one, signage for a large development of mixed uses that needed indications on the property about how to access it.

Mr. Lee concurred and said the tasteful-looking sign would fit in with the modern trend of low-lying signs elsewhere.

*The motion **passed** by unanimous vote, 6-0.*

Mr. Mulligan resumed his voting seat.

- D) Request of **Wentworth Corner LLC, Owners**, for the property located at **960 Sagamore Avenue** whereas relief was needed from the Zoning Ordinance to demolish existing structures and construct an 8-unit residential building which requires the following: 1) A Variance from Section 10.521 to allow a lot area per dwelling unit of 5,360 square feet where 7,500 square feet is required. 2) A Variance from Section 10.1114.31 to allow two driveways on a lot where one driveway is permitted. Said property is shown on Assessor Map 201 Lot 2 and lies within the Mixed Residential Business (MRB) District.

SPEAKING TO THE PETITION

Attorney F. X. Bruton was present on behalf of the applicant and asked that the petition be continued to the August meeting so that the applicant could have further discussions with his abutters and update his proposal accordingly.

DECISION OF THE BOARD

*Vice-Chair McDonell moved to **postpone** the petition to the August 17 meeting, seconded by Mr. Parrott.*

Vice-Chair McDonell said it made sense to let the applicant discuss his project further with the abutters, and Mr. Parrott concurred.

*The motion **passed** by unanimous vote, 7-0.*

II. PUBLIC HEARINGS – NEW BUSINESS

- A) Request of **Nobles Island Condos, Owner** for the property located at **500 Market Street** whereas relief was needed from the Zoning Ordinance to allow a medical office which requires the following: 1) A Special Exception from Section 10.440, Use #6.20 to allow a medical office where the use is permitted by Special Exception. Said property is shown on Assessor Map 120 Lot 2 and lies within the Character District 4-L1 (CD4-L1) District.

SPEAKING TO THE PETITION

The applicant Anthony Wilson was present and said his small medical practice was pre-approved by the condominium association. He reviewed the criteria and said they would be met.

Mr. Stith said the prior use was a medical office consultation office and that there was no record of it being approved by the Board for a special exception, so that was the reason why the applicant was before the Board. He noted that there was another request for a medical office on the property in 2020, for which a parking analysis was done for a professional office. He said there were 115 existing parking spaces were 114 were required, so there would be an extra space for the applicant. Ms. Eldridge asked how large the applicant's staff was. Mr. Wilson said there was a receptionist, a physician's assistant, and an office administrator.

Chairman Rheume opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one was present to speak, and the Chair closed the public hearing.

DECISION OF THE BOARD

*Mr. Mulligan moved to **grant** the special exception for the petition, and Mr. Parrott seconded.*

Mr. Mulligan said a similar unit in that condominium association was granted the identical relief the year before, so it was clearly a permitted use by special exception. He said granting the proposed use would not present any hazard to the public or other properties from potential fire, explosion, or release of toxic materials. He said there was no detriment to property values in the vicinity or change in the essential characteristics of any area, including residential neighborhoods or businesses and industrial districts on account of the location or scale of buildings, parking areas, public accessways, odor, smoke, dust and other pollutants, noise, glare, heat, or unsightly storage of equipment, vehicles, or other materials. He said it was a fully developed site and only the use was changing and none of those things were impacted by the use. He said granting the special exception would pose no creation of a traffic safety hazard or substantial increase in the level of traffic congestion in the vicinity because the parking was more than adequate and it was a fully developed site downtown. He said it would pose no excessive demand on municipal services including water, sewer, waste disposal, police and fire protection, schools, and so on because none of that was indicated. He said there would be no significant increase of stormwater runoff onto adjacent properties because there would be no physical change to the property. He said the proposal met all the criteria and should be granted.

Mr. Parrott concurred and had nothing to add. *The motion passed by unanimous vote, 7-0.*

- B) Request of **Robert B. Tozier** and **Alison M. Tozier, Owners** for the property located at **552 State Street** whereas relief was needed from the Zoning Ordinance to relocate an existing mini-split to a different location on the property which requires the following: 1) A Variance from Section 10.515.14 to allow a 3' side yard setback where 10' is required. Said property is shown on Assessor Map 127 Lot 19 and lies within the Mixed Residential (MRO) District.

SPEAKING TO THE PETITION

The applicant Robert Tozier was present and said he wanted to move the mini-split ten feet around to the other side of the shed for better use and aesthetics. He said there would be no noise impacts because a commercial building was on that side. He referred to his written criteria.

Chairman Rheume asked if the underground coolant pipes would be relocated to the new location. Mr. Tozier agreed and said they were placed there when the unit was originally installed, knowing that they couldn't get a variance in time for summer.

Chairman Rheume opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one was present to speak, and the Chair closed the public hearing.

DECISION OF THE BOARD

Mr. Lee moved to grant the variance for the petition as presented, and Mr. Parrott seconded.

Mr. Lee said the request to relocate the existing unit to a better spot was reasonable. He said granting the variance would not be contrary to the public interest or to the spirit of the ordinance and substantial justice would be done. He said the values of surrounding properties would not be diminished because the unit would be located behind some fencing and invisible to most of the neighbors and abutters, and the abutter on that side of the shed was commercial. He said literal enforcement of the ordinance would result in unnecessary hardship and that there was no fair and substantial relationship between the purpose of the ordinance and its application to the project. He said the proposed use was a reasonable one and that the variance should be granted.

Mr. Parrott concurred and said it was a simple request. He noted that the applicant's fenced property was against another fenced property and a commercial one, so he couldn't see any concerns for anyone and thought the Board could and should approve the request.

Chairman Rheume said he would support the motion with some trepidation because he was always concerned when there was something that was demonstrated could be done in a fully compliant way with the ordinance and the applicant was trying to move that to be in a non-compliant way. He said he could see where there was some concern with the current location for the item but that there were mitigating factors, including the fencing in the area from a visual

standpoint and it was up against a robust commercial property that should have its own central air conditioning. He said the units were very quiet and would be the least impactful from a noise impact standpoint to the abutters.

*The motion **passed** by unanimous vote, 7-0.*

- C) Request of **Eric D. Weinrieb** and **Rachel L. Hopkins, Owner** for the property located at **9 Middle Road** whereas relief was needed from the Zoning Ordinance to demolish existing garage and construct new garage which requires the following: 1) Variances from Section 10.521 to allow a) a 1.5' rear yard where 10 feet is required; b) a 2.5' left side yard where 10' is required; and c) 27% building coverage where 25% is the maximum allowed. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 152 Lot 47 and lies within the General Residence A (GRA) District.

SPEAKING TO THE PETITION

The applicant Eric Weinrieb was present to review the petition. He said the existing garage was in tough shape and had a slab on grade with no foundation, so trying to bring it up to code wasn't feasible. He said the proposed location for the new garage was to move it toward Lawrence Street and push it away from the northerly abutter. He said the abutters approved the project. He reviewed the criteria and said they would be met.

Chairman Rheaume noted that the garage would be new construction that would be tight against the neighbors and that enough room was needed to maintain it. Mr. Weinrieb said they had a close relationship with the neighbors on the north side of the garage and would get an easement from them. He said on the east side, the property line and the occupation line were two different things because the abutter's fence could change, but for now there was adequate space to maintain the garage. Mr. Hagan asked if a hardship would be created by moving the garage further off the property line or if there would be a grading issue. Mr. Weinrieb said it wouldn't create any further grading issues but was more about access and creating a greater pinch point with the northerly abutter due to the jog in the property.

Chairman Rheaume opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one was present to speak, and the Chair closed the public hearing.

DECISION OF THE BOARD

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

Mr. Mulligan said the relief requested was driven by the desire to replace a garage structure that had outlived its useful life and to replace it in the same location but take advantage of modern

amenities and upgrade it so that it was slightly larger but not enormously so. He said the existing setback nonconformities would be slightly improved but that the applicant made a good argument as to why it made no sense to slide it forward a whole lot more because a lot of it was inherent in the trapezoidal nature of the lot's shape. He said the lot coverage was slightly higher than permitted but wasn't something that caused him any heartburn. He said the reconfiguration of Middle Road created a dead zone in front of the house as well as some additional open space. He said the petition met all the criteria and that granting the variance would not be contrary to the public interest or to the spirit of the ordinance, and the residential character of the neighborhood would not be threatened by what was proposed. He said the existing neighborhood functioned well, even with the existing nonconformities, and the nonconformity created by the variances would not have any effect on that. He said substantial justice would be done, noting that he didn't see any gain to the public because the property was already noncompliant and would be slightly lessened and the relief requested wasn't extreme for that neighborhood. He said granting the variance would not diminish the values of surrounding properties, noting that a modern and tastefully designed garage would increase surrounding property values as well as the applicant's. He said the hardship was due to special conditions of the property, including the corner lot and trapezoidal shape, and the jog to the north that affected where a new modern garage could be sited and shifting it forward could create access problems. He said there was no fair and substantial relationship between the purpose of the lot coverage and setback requirements and their strict application to the property. He said it was a reasonable use, a residential use in a residential zone, and should be approved.

Mr. Parrott concurred. He said the lot was oddly shaped and the applicant was making the best use of existing constraints to develop a reasonably sized garage, which everyone was entitled to.

*The motion **passed** by unanimous vote, 7-0.*

At this point, Attorney Pelech for Petition H, 0 Islington Street, approached the Board to request that the petition be postponed to the August meeting to resolve concerns from the abutters.

It was moved, seconded, and passed to take Petition H out of order. (See Petition H).

Mr. Hagaman recused himself from the following petition.

- D) Request of **Igor Mihailov, Owner** for the property located at **1011 Banfield Road** whereas relief was needed from the Zoning Ordinance for the keeping of chickens which requires the following: 1) A Special Exception from Section 10.440, Use #17.20 to allow the keeping of farm animals where the use is allowed by Special Exception. Said property is shown on Assessor Map 283 Lot 40 and lies within the Single Residence A (SRA) District.

SPEAKING TO THE PETITION

The applicant Igor Mihailov was present to review the petition. He noted that the chickens would be in a coop at the back of the property, ten feet away from the property line. He reviewed the criteria and said they would be met.

In response to questions from the Board, Mr. Mihailov said there would be a maximum of twelve chickens and no roosters. He said he placed the number of chickens at twelve because it was the maximum amount allowed. He said the chickens would be pets and the coop would be at the far corner of the backyard, and his neighbors were in support of the project.

Chairman Rheume opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

Sara Smith of 969 Banfield Road said her two sons would love to visit the chickens.

Neighbor Frank Mahine said their grandchildren loved the chickens and the eggs.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one else was present to speak, and Chairman Rheume closed the public hearing.

DECISION OF THE BOARD

*Ms. Eldridge moved to **grant** the special exception, with the following **stipulation**:*

- There shall be no more than twelve chickens, and no roosters.

Mr. Parrott seconded.

Ms. Eldridge said the applicant's house was on an acre that was sparsely populated and met the standards for a special exception. She said granting the special exception would pose no hazard to the public or adjacent properties and no detriment to property values or change in the essential characteristics of the area including residential neighborhoods, businesses and industrial districts on account of the scale of buildings or other structures, parking areas, accessways, odors, smoke, gas or other pollutants, glare, vibration or unsightly outdoor storage of equipment, vehicles or other materials. It would pose to creation of a traffic safety hazard or increase in the level of traffic congestion and no excessive demands on municipal services including but not limited to water, sewer, waste disposal, police and fire protection, and schools. It would pose no significant increase of stormwater runoff onto adjacent properties or streets.

Mr. Parrott concurred and had nothing to add.

*The motion **passed** by unanimous vote, 6-0.*

Mr. Hagaman resumed his voting seat.

- E) Request of **145 Cabot Street Condos, Owner** and **Jason Stringer, Owner/Applicant** for the property located at **145 Cabot Street** whereas relief was needed from the Zoning Ordinance to construct a new storage shed which requires the following: 1) Variances from Section 10.521 to allow a) a 7.5' rear yard where 8'9" is required; and b) an 8' side yard where 8'9" is required. Said property is shown on Assessor Map 145 Lot 88 and lies within the General Residence C (GRC) District.

SPEAKING TO THE PETITION

The applicant Jason Stringer was present and said he was one of four condo owners who wanted a 12'x24' storage shed for sports and other outdoor equipment. He said the shed would be divided into four sections, one for each owner, and would have a 2-ft overhang in the rear for rakes, shovels, and so on. He said the neighbors had no issue with the proposed shed.

Mr. Hagaman noted that the applicant built a pad with the intention of building the shed on it at some point. Mr. Stringer agreed and said the condo owners bought bricks from the demolished St. Patrick's school to redo their patio but got more bricks than they needed. Mr. Hagaman asked what would happen to the slab if the petition wasn't approved. Mr. Stringer said he would probably apply for a smaller shed. Chairman Rheume asked about electricity. Mr. Stringer said he was going to apply for it in six months, noting that there was an underground conduit in place. Chairman Rheume said the overhang for the tool storage would face the neighbors on the back side of the fence and asked if the overhang would have racks. Mr. Stringer said there would be a few posts for a hose. Chairman Rheume remarked that the neighbors had second-floor windows, so the overhang would be visible to them, even though there was a fence.

Chairman Rheume opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one was present to speak. Mr. Stith said an abutter's letter of support was received. Chairman Rheume closed the public hearing.

DECISION OF THE BOARD

*Mr. Parrott moved to **grant** the variance for the petition as presented, seconded by Mr. Lee.*

Mr. Parrott said it was a bit unusual but straightforward and noted that it was for a shed, which the Board was seeing quite a few of lately, but that it was just larger. He said the applicant presented a good argument as to why it was needed and that the property would support it. He said granting the variance would not be contrary to the public interest or to the spirit of the ordinance, saying that it was a multi-family neighborhood, and in a situation where condo units were smaller, extra storage was more valuable than it was for people who lived in larger houses and would be supported by the public interest. He said substantial justice would be done because, lacking some offsetting interest that the public would perceive to be a disadvantage to them, the tip of the balance went to the owners of the property. He said granting the variance would not diminish the values of surrounding properties because they were fenced in and the building would be up to code, so it would reflect well on the property as well as the surrounding ones, and the property would be well maintained because part of the reason for the shed was to have ready access to outside maintenance equipment. He said the hardship was that the property was small to have a four-unit condominium on it, so the special conditions were the narrow property and making the best use of it as possible. He noted that it took a good deal of initiative and skill by making the platform out of bricks and re-using the bricks. He said there was no fair

and substantial relationship between the general purposes of the ordinance and their specific application to the property. He said the project was an unusual one but would reflect well on the property and the nearby ones and met all the criteria. Mr. Lee concurred. He said the shed was the size of a one-car garage but divided among four people and was a reasonable place to put sports and maintenance equipment.

Chairman Rheume said he would support the motion, even though he had concerns about applicants who partially built a project before coming to the Board. He said he didn't want to encourage that sort of thing but agreed that the impact would be minimal.

*The motion **passed** by unanimous vote, 7-0.*

- F) **REQUEST TO POSTPONE** Request of **Anne and Andrew McPherson, Owners** for the property located at **204 Wibird Street** whereas relief is needed from the Zoning Ordinance to add a second story rear addition and deck expansion which requires the following: 1) Variances from Section 10.521 to allow a) A 7.5' right side yard where 10' is required; and b) 27.5% building coverage where 25% is the maximum allowed. 2) A Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 149 Lot 116 and lies within the General Residence A (GRA) District. **REQUEST TO POSTPONE**

Chairman Rheume stated that the applicant had concerns about the nature of the addition and that it might change.

DECISION OF THE BOARD

*Mr. Mulligan moved to **postpone** the petition to the August 17 meeting, seconded by Vice-Chair McDonell.*

Mr. Mulligan said it was a reasonable request, and if the applicant changed the design, he may not need the relief advertised for. Vice-Chair McDonell concurred.

*The motion **passed** by unanimous vote, 7-0.*

- G) **REQUEST TO POSTPONE** Request of **Sarah Sommer Kaufman Revocable Trust, Owner** for the property located at **546 Sagamore Avenue** whereas relief is needed from the Zoning Ordinance to add a rear addition and vertical expansion of the garage which requires the following: 1) A Variance from Section 10.521 to allow a 4.5' right side yard where 10' is required. 2) A Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 222 Lot 10 and lies within the Single Residence B (SRB) District. **REQUEST TO POSTPONE**

Mr. Lee recused himself from the vote.

Chairman said the applicant couldn't attend the meeting, so he had asked that it be postponed.

DECISION OF THE BOARD

*Ms. Eldridge moved to **postpone** the petition to the August 17 meeting, seconded by Mr. Hagaman.*

Ms. Eldridge said it was a reasonable request, given that the applicant couldn't be at the meeting. Mr. Hagaman concurred.

*The motion **passed** by unanimous vote, 6-0.*

- H) Request of **Jaremy James Conte, Owners** for the property located at **0 Islington Street** whereas relief is needed from the Zoning Ordinance to demolish existing structures and construct new single family dwelling which requires the following: 1) Variances from Section 10.521 to allow a) a lot area of 5,225 square feet where 15,000 square feet is required; b) a lot area per dwelling unit of 5,225 square feet where 15,000 square feet is required; and c) 50 feet of frontage where 100 feet is required. Said property is shown on Assessor Map 233 Lot 7 and lies within the Single Residence B (SRB) District.

Attorney Pelech asked that the petition be postponed to the August meeting to resolve concerns from the abutters.

DECISION OF THE BOARD

*Mr. Hagaman moved to **postpone** the petition to the August 17 meeting, seconded by Ms. Eldridge.*

Mr. Hagaman said it was a reasonable request that would give the applicant the opportunity to work with the abutters. Ms. Eldridge concurred and had nothing to add.

*The motion **passed** by unanimous vote, 7-0.*

- I) Request of **Seacoast Repertory Theater, Owner** for the property located at **125 Bow Street** whereas relief is needed from Section 10.5A40 of the Zoning Ordinance for the expansion of a non-conforming structure and the addition of a mechanical platform to create a 2.5 foot rear yard where 5 is required. Said property is shown on Assessor Map 105 Lot 1F lies within the Character District 4 (CD4) District.

SPEAKING TO THE PETITION

Architect Tracy Kozak was present on the applicant's behalf to review the petition. She said the relief was needed because they had to insulate a sprinkler system in the glass lobby and provide heat and air. She noted that they also had to remove the HVAC duct and put in a rooftop unit that was elevated on a platform seven feet high to allow emergency egress. She reviewed the criteria and said they would be met.

Mr. Hagaman said the large piece of equipment on a concrete slab and steel framing was different than a big round tube and asked if there was any concern for the public to have that kind of arrangement over the door. Ms. Kozak said it would be fully engineered like a building, with structural steel columns and a composite concrete. Chairman Rheume said the Staff Report indicated that the unit would mechanically only require a 3-ft setback. Mr. Stith agreed and said the section for condensers had a specific size requirement and when things exceeded it, the accessory setback was applied. He said it was ten feet in most cases but the rear yard setback was three feet. Chairman Rheume said the unit would be fully compliant if it were on the ground. Ms. Kozak said the unit would be five feet back from the property line.

Chairman Rheume opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one was present to speak, and the Chair closed the public hearing.

DECISION OF THE BOARD

*Vice-Chair McDonell moved to **grant** the variance for the petition, seconded by Mr. Hagaman.*

Vice-Chair McDonell said it was an unusual building and the back area was a tight space, but it was the best place to put it. He said granting the variance would not be contrary to the public interest and the spirit of the ordinance would be met, noting that there would be no alteration to the essential character of the neighborhood or any threat to the public's health, safety, or welfare. He said substantial justice would be done because the benefit to the applicant was obvious, something they needed for the current use, and no harm was articulated to the general public or other individuals. He said granting the variance would not diminish the values of surrounding properties. He said it was a common use in back spaces like that and he didn't see any reason why property values would be diminished, especially given what the applicant was removing and replacing. He said literal enforcement of the ordinance would result in unnecessary hardship due to the property's special conditions of being a constrained area and tightly squeezed back there, so he saw no fair and substantial relationship between the purposes of the ordinance and their application to the rear yard setback requirement to the property. He said the proposed use was a reasonable one and should be granted. Mr. Hagaman concurred and had nothing to add.

The motion passed by unanimous vote, 7-0.

- J) **REQUEST TO POSTPONE** Request of **2422 Lafayette Road Association, LLC, Owner** for the property located at **2454 Lafayette Road** whereas relief is needed from the Zoning Ordinance to construct a standalone automated teller machine (ATM) which requires the following. 1) A Variance from Section 10.1530 to allow an automated teller machine (ATM) as defined in this section to be a principal freestanding structure and not located on the outside of a building, or in an access-controlled entrance to a building, or within a principal use in a building. Said property is shown on Assessor Map 273 Lot 3 and lies within the Gateway Corridor (G1) District. **REQUEST TO POSTPONE**

Vice-Chair McDonell and Mr. Mulligan recused themselves from the vote.

Chairman Rheume said the applicant requested to postpone because only five Board members were available to vote, due to recusals.

DECISION OF THE BOARD

*Mr. Parrott moved to **postpone** the petition to the August 17 meeting, seconded by Mr. Hagaman.*

Mr. Parrott said it was a first-time request and reasonable, and he saw no reason to not postpone it. Mr. Hagaman concurred.

*The motion **passed** by unanimous vote, 5-0.*

- K) Petition of **Lonza Biologics, Inc.** for property located at **101 International Drive** to add an above ground storage tank which requires the following: 1) from Section 308.02(c) of the Pease Development Ordinance to allow an above ground storage tank (AST) exceeding 2,000-gallon capacity per facility. Said property is shown on Assessor Plan 305 Lot 6 and lies within the (Pease) Airport Business Commercial (ABC) District.

SPEAKING TO THE PETITION

Attorney Justin Pasay was present on behalf of the applicant, with project manager Patrick Crimmins and Ricardo Santana of Lonza. Attorney Pasay said the generator would support Lonza's LINKS program and was the same relief granted for a previous similar generator. He reviewed the PDA criteria and said they would be met.

In response to the Board's questions, Attorney Pasay said the generator was unique to the LINKS program and that general generator support would be necessary if an incident or loss of power occurred. He said there was no toxic issues. He said the size of the tank was dictated by the operational time for the generator; the previous tanks that were recommended for approval were located on the back side of that building; and the pit under the tank was lined with a fuel-proof liner and large enough to contain a full drain of the tank.

Chairman Rheume opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one was present to speak, and Chairman Rheume closed the public hearing.

DECISION OF THE BOARD

*Mr. Mulligan moved to **recommend approval**, and Mr. Parrott seconded.*

Mr. Mulligan reviewed the PDA criteria. He said granting the variance would pose no adverse effect or diminution in values of surrounding properties because the site was a fully-developed and highly industrial one and the values of surrounding properties would not be affected by the introduction of the mechanical utility. He said the use itself was permitted but just in a smaller size. The benefit to the public interest was that the essential characteristics of the surrounding vicinity would not change with the introduction of a tank that as larger than the 2,000-gallon limit. He said the denial of the variance would result in unnecessary hardship due to special conditions of the large size of the lot and the very large building on it and the fact that there several similar generators with tanks that were previously approved. He said those were special conditions of the property that were different from properties in the nearby vicinity. He said there was no fair and sub relationship between the purpose of the 2,000-gallon requirements and its application to the property. He said the use was permitted but just at a different size, so it was a reasonable use and met the unnecessary hardship test. He said granting the variance would result in substantial justice because the loss to the applicant would outweigh any gain to the PDA if the requirement was strictly adhered to. He said the proposed use would not be contrary to the spirit of the zoning rule because the use was allowed and it was just the size of the use that the relief was sought for, and that size had been approved before, plus the fact that the site was highly industrial and fully developed. He said the Board should recommend approval.

Mr. Parrott concurred and had nothing to add.

*The motion **passed** by unanimous vote, 7-0.*

II. OTHER BUSINESS

There was no other business.

III. ADJOURNMENT

The meeting was adjourned at 10:15 p.m.

Respectfully submitted,

Joann Breault
BOA Recording Secretary