

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

7:00 P.M.

JUNE 16, 2015

MEMBERS PRESENT: Chairman David Witham; Vice-Chairman Arthur Parrott; Charles LeMay; Christopher Mulligan, Jeremiah Johnson, David Rheaume, Derek Durbin, Patrick Moretti.

MEMBERS EXCUSED: Derek Durbin

ALSO PRESENT: Vincent Hayes, Planning Department

Mr. Durbin was excused. Mr. Johnson and Mr. Moretti assumed voting seats for the meeting.

I. APPROVAL OF MINUTES

A) May 19, 2015

*The minutes were **approved** with minor corrections by unanimous vote.*

II. PUBLIC HEARINGS – NEW BUSINESS

1) Case # 6-1

Petitioners: Zoe Copenhaver Daboul & Michael Edward Daboul

Property: 53 Humphreys Court

Assessor Plan 101, Lot 39

Zoning District: General Residence B

Description: Install 13"± x 38" ± condenser unit.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. Variances from Section 10.521 to allow the following:
 - a) A 3'2" ± right side yard setback where 10' is required;
 - b) Building coverage of 44.3%± where 42.8% was previously approved and 30% is the maximum allowed;
 - c. Open space coverage of 35.7%± where 25% is the minimum required.

Vice-Chair Parrott recused himself from the petition and Mr. Johnson assumed a voting seat.

SPEAKING IN FAVOR OF THE PETITION

The owner Ms. Zoe Daboul told the Board that she had made a math error and was actually asking for 3.4 square feet, in addition to what they had. She said the condenser unit would be located at the left side of the house and would be mounted on a concrete slab flush with the ground. The unit itself would be mounted on a 12-inch bracket stand for a total height of 44 inches. The height of the gate was 45” and the fence height was 47”, and the existing fence would block most of the view. The wire and housing would need to be on the outside near the 1st floor window.

Chairman Witham thought the math was off and that Ms. Daboul was asking for a lot less, at 42.9%. Mr. Rheume asked whether the fence was even with the neighbor’s garage. Ms. Daboul said that it appeared to be. Mr. Rheume asked whether the neighbor used the regularly area above the garage, and Ms. Daboul replied that her neighbor didn’t use the area for living space.

**SPEAKING IN OPPOSITION TO THE PETITION OR
SPEAKING TO, FOR, OR AGAINST THE PETITION**

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

*Mr. LeMay made a motion to **grant** the variance at 42.9% lot coverage, with the following stipulation:
1) that it be modified to the .1%.*

Mr. Mulligan seconded the motion.

Mr. LeMay stated that it was a straightforward application and that the sideline setback was minor for that type of appliance. He knew from experience that the unit was very quiet. Granting the variance would not be contrary to the public interest or to the spirit of the Ordinance because it would not change the neighborhood in any noticeable way. It was a difficult lot in terms of size and layout, and putting the unit up against the garage on the other side was probably one of the better places to put it. Substantial justice would be done because it would be an advantage to the owner for air conditioning and heat. It would not diminish the values of surrounding properties because the condenser would be efficient, and it was common to have outdoor air conditioners in that area, so it would present no substantial noise to the neighborhood. Literal enforcement of the Ordinance would result in unnecessary hardship to the applicant because the hardship would be periodic and severe if the Board were to enforce the strict letter of the Ordinance.

Mr. Mulligan stated that the only place the applicant could site the appliance and stay within setbacks was either in the front of the house on the street or within the front yard between the driveway and the house on the other side, neither of which made any sense. The non-conforming lot would require the installation to be somewhere within the setbacks, and the chosen location was the most appropriate place. The lot coverage was already in existing non-conformance, and the increase would be minimal.

*The motion **passed** with all in favor, 6-0.*

2) Case # 6-2

Petitioner: 599 Lafayette LLC

Property: 599 Lafayette Road

Assessor Plan 229, Lot 8

Zoning District: Gateway

Description: Install a transformer and generator. Construct an overhang over existing sidewalk.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.531 to allow a left side yard setback of 15'± where 30' is required.

Vice-Chair Parrott resumed his seat and Mr. Johnson returned to alternate status.

SPEAKING IN FAVOR OF THE PETITION

Mr. Todd Baker, Manager of 599 Lafayette LLC and the owner of the Bowl-O-Rama plaza complex, stated that he had two small encroachments and setbacks. They signed a lease with Convenient MD, a medical clinic that would be placed at the corner of the plaza, and they planned to do additional renovations to the property by installing a new entryway and changing the façade to make it more modern and attractive. Mr. Baker said there would be no change in the usage footprint and that the tower for Convenient MD would be an overhanging one. The challenge posed was that the lot line was drawn 30 feet from the building, so any modifications on that side would encroach on the 30' setback. They wanted to put the overhanging entryway and place the overhead power lines with transformers underground. The generator would be in the setback, but they would curb and screen it. Mr. Baker introduced Mr. Max Puyanic, the CEO of Convenient MD, who gave a brief history of the clinic.

Mr. Rheame asked Mr. Baker why he would place the generator and transformer side by side instead of placing them along the building face, which would allow for less of an encroachment toward the property line. Mr. Baker replied that the transformer had to be four feet away from anything and that they also wanted to maintain the sidewalk, but they could do it either way. Mr. Rheame noted that the diesel generator was most likely an emergency generator but wasn't far away from an apartment complex. He knew that the Planning Board would review it, but his concern was whether Mr. Baker had thought about sound barriers. He was also concerned that Mr. Baker might have to return to the Board for additional relief to do a more substantial barrier than the existing fencing that they had. Mr. Baker replied that they had a similar generator in Stratham that was immediately adjacent to a residential area and it had not been a problem. It was very quiet and hardly ever on. During an emergency, the decibel level was a lot less than other systems.

Mr. Baker went through the criteria and stated they would be met. Chairman Witham asked what the plans were for a medical facility up against a bowling alley wall. Mr. Baker replied that they would put up a soundproof wall and also noted that Bowl-O-Rama would eventually go down to only 12 lanes and the available space would be something else. Mr. Rheame asked whether Mr. Baker would have the parking lot repaved, and Mr. Baker agreed that he would.

**SPEAKING IN OPPOSITION TO THE PETITION OR
SPEAKING TO, FOR, OR AGAINST THE PETITION**

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

*Mr. Mulligan made a motion to **grant** the variance as presented and advertised. Vice-Chair Parrott seconded the motion.*

Mr. Mulligan stated that the applicant was looking for 15 feet of relief from the side yard setback, where 30 feet was required, although the amount of area impacted was small, but the setback would be respected. He felt that it wasn't a lot of relief requested for a big property and operation. Granting the variance would not be contrary to the public interest or to the spirit of the Ordinance because it would not change the essential characteristics of the neighborhood. It would result in substantial justice because the Board had to balance the gain to the general public versus the loss to the applicant if the request was denied. If the variance was denied, the gain to the public would be minimal whereas the loss to the applicant would be large. Mr. Mulligan felt that the applicant's proposed tenant had made a compelling argument for why the overhang was necessary and was a desirable feature for the property. Granting the variance would not diminish the value of surrounding properties because it would be part of an overall upgrade that would benefit all surrounding properties. It would also include the removal of the unsightly overhead utility configuration, which would be positive for the surrounding properties. The literal enforcement of the Ordinance would result in unnecessary hardship because the lot was unique, but there was no substantial relationship between the setback requirements as they related to the property. The sea of asphalt on the other side of the setback wouldn't be impacted by the encroachment. For all those reasons, he thought the petition should be approved.

Vice-Chair Parrott concurred with Mr. Mulligan and noted that the area of encroachment was surrounded by parking lot pavement and the adjacent building was commercial as well, so it would not interfere with anything in the area and would look better than the way it was presently constructed.

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

3) Case # 6-3

Petitioner: Mark D. Gray

Property: 140 Summer Street

Assessor Plan 137, Lot 2

Zoning District: General Residence C

Description: Construct 27'± long third floor dormer.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.321 to allow a lawful nonconforming structure to be extended or structurally altered without conforming to the requirements of the Ordinance.
2. A Variance from Section 10.521 to allow a 3.5'± right side yard setback where 10' is required.

SPEAKING IN FAVOR OF THE PETITION

The owner Mr. Mark Gray stated that the property was a duplex, with an apartment on the 1st floor and another on the 2nd and 3rd floors, in which he resided. He needed the extra relief for closet space, head room, light and egress due to his expanded family. He said that a dormer needed to be added to the 3rd floor, and that it would be in character with the neighborhood and built within the current footprint.

Mr. Rheume asked Mr. Gray what drove his decision to put a larger dormer close to his neighbor instead of replacing the two existing smaller dormers with a larger one and building a smaller dormer on the side that faced the close neighbor. Mr. Gray said it was a cost issue. Mr. Rheume stated that the Board normally asked for floor plans for new additions, but none had been submitted. He asked Mr. Gray to describe the current floor layout on the attic level and also what he proposed to put in, and Mr. Gray did so. Mr. Rheume asked whether the dormer would be the closet area, and Mr. Gray replied that it would be two egress windows and the closet space would be between the windows. Mr. Rheume asked whether neighbor across from Mr. Gray had a dormer at the same level, and Mr. Gray said that his dormer would be lower than theirs. Mr. Moretti asked whether any windows on the 3rd floor were egress size, and Mr. Gray said they were not. Mr. Moretti reasoned then that the room was not technically livable space. Mr. Gray said it used to be his office but he had to put a bed up there, which was the reason for the egress window.

Mr. Mulligan noted that the submitted photo showed the neighborhood property on State and Summer Streets, but he also noted that there was an elaborate system of decking and fire escapes and asked whether the proposed dormer would face them or if it would be set back. Mr. Gray replied that his dormer would be set back and the addition would be a little lower than that. Chairman Witham stated that his only concern in granting the variance on that side of the house was that the house would have a larger mass and scale. He preferred to see the side dormer wall not aligned with the front face of the house, but rather pushed back a bit to knock down the scaling and massing. Mr. Gray replied that he was trying to maximize the 3rd floor to get a big closet and he felt that the dormer would not be seen due to the neighbor's house.

SPEAKING IN OPPOSITION TO THE PETITION OR SPEAKING TO, FOR, OR AGAINST THE PETITION

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

Mr. Rheume stated that the Board saw that type of dormer often in New Englanders, but what was being asked for was awkward and a lot of relief, and it would be tight up against the neighbor. There were existing small dormers on the opposite side, and having the proposed dormer right up to the front of the house would present an awkward appearance and affect the character of the neighborhood. He said that he would be in favor of granting it but would require that it be pushed back to be even with the existing gabled dormer on the opposite side, in terms of the starting point. He asked whether it could be 27 feet long at that point or made shorter by a comparable amount.

Mr. LeMay asked whether the Board knew how far back the other gabled dormer was, and Chairman Witham said that they didn't. Mr. Rheume said he thought the Planning Department would review it. Chairman Witham said that he appreciated the need for more space, but it was an attic space in a New Englander, and the Board had to be sensitive to not making 3-story homes in a neighborhood with 2-

story homes. Vice-Chair Parrott stated that he walked around the house twice and felt that the gabled dormers looked a bit out of place, but he thought that a very large shed dormer on the other side would look odd and would detract from a handsome house, so he agreed with Chairman Witham's comment as to the appropriateness of the change.

*Mr. Rheume made a motion to **grant** the variance as presented and advertised, with the following stipulation:*

- 1) *that the dormer placement be such that the start of the dormer from the front of the house be roughly equal to that of the gabled dormer on the opposite side of the house of the proposed dormer.*

Vice-Chair Parrott seconded the motion.

Mr. Rheume stated that granting the variance would not be contrary to the public interest because the stipulation would keep the streetscapes looking fairly similar. The Board had to balance the needs of the neighbors. From what he had seen of New Englanders, there was generally some setback to the dormer, especially in the applicant's case where there were existing gabled dormers on the opposite side. Since a shed dormer had a very different appearance from a gabled dormer, it would serve the public interest to have it pushed back so that passersby and neighbors had a more pleasing visual. Granting the variance would observe the spirit of the Ordinance. A lot of relief was being requested, a 10' side setback from the neighboring home, 3-1/2' of which was 65% of relief from the requirement. It would be very tight to a neighboring house. The direct abutters were supportive, however, so the light and air concerns were somewhat reduced within the spirit of the Ordinance. Granting the variance would do substantial justice because it would allow the homeowner to get additional space and allow vertical expansion while balancing the public need, so there would be a win-win for both sides. It would not diminish the value of surrounding properties because the increase on the side would add to the value of the home and in turn would be unlikely to diminish the value of surrounding properties. As to the hardship test, it was a unique situation because the older lot was narrow and long, and with the position of the house up against the property line, it was the only legitimate expansion that the owner could do. He felt it was reasonable because it would be masked by the neighboring house, which had dormers as well, and he felt that the variance met all five criteria.

Vice-Chair Parrott concurred with Mr. Rheume and had nothing to add.

Chairman Witham stated that he would also support the motion. He knew it wasn't exactly what the applicant was hoping for, but the applicant would get a 3-story wall 3-1/2' from the property line, which was a considerable amount of relief.

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

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- 4) Case # 6-4
Petitioner: Lisa M. Zwalley Miller
Property: 683 State Street
Assessor Plan 137, Lot 12
Zoning District: General Residence C

Description: Approval of a seventh dwelling unit with related off-street parking.

Requests: The Variances and Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Special Exception under Section 10.440, Use #1.42 to allow seven dwelling units on the property where more than four units is allowed by Special Exception.
2. A Variance from Section 10.521 to allow a lot area per dwelling unit of 1,717 s.f. ± where 3,500 s.f. is required.
3. Variance(s) from Section 10.1114 to allow off-street parking that does not comply with the design requirements of the Zoning Ordinance.

SPEAKING IN FAVOR OF THE PETITION

The applicant was not present to speak to the petition.

SPEAKING IN OPPOSITION TO THE PETITION OR SPEAKING TO, FOR, OR AGAINST THE PETITION

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

*Vice-Chair Parrott made a motion to **deny** the petition without prejudice, and Mr. LeMay seconded the motion. The motion **passed** with all in favor, 7-0.*

5) Case # 6-5

Petitioners: William T. & Annelise Ellison

Property: 687 Middle Street

Assessor Plan 148, Lot 34

Zoning District: General Residence A

Description: Replace existing garage with a 24'± x 30'± structure.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.521 to allow a 0'± right side yard setback where 10' is required.

Mr. LeMay recused himself from the petition and Mr. Johnson assumed a voting seat.

SPEAKING IN FAVOR OF THE PETITION

The owner Mr. William Ellison stated that they wanted to replace the existing garage because they needed the extra storage. He went through the criteria and stated that the petition met all of them.

Chairman Witham stated that the Board was very uncomfortable with a zero-foot setback. He noted that the eave overhang would encroach beyond the abutter and said that the neighbors could move or someone might want to put up a fence and the roof would overhang it. He preferred to see some kind

of buffer. With a zero-foot setback, the applicant would always have to rely on the abutter's property to maintain his structure, and if there were a fire, the firefighters would have to get around the building. As to the issue for not being able to slide the structure over even 2 feet for a setback due to the tree, he felt that there would be significant root damage caused anyway, and if the structure was moved over 2 feet, it wouldn't encroach it any closer to the tree. Mr. Ellison said that the distance between the two houses was a little over 3 feet, so the 3 feet would be maintained. He asked whether the Board wanted to move it away from that. Chairman Witham replied that Mr. Ellison had asked for a zero-foot setback, and he noted that even the footprint was on the abutter's property, so it was hard to get comfortable with the setback.

Mr. Rheume asked Mr. Ellison if he had had a survey done to determine where the property line was, and Mr. Ellison replied that he had. Mr. Rheume agreed that there was more distance between Mr. Ellison and his neighbor's property line, judging by what he saw in the package, but at the very minimum, he felt that the Board would like to see a detailed survey for a zero-foot setback because it was likely that eave would overhang. Mr. Ellison said that he had no problem changing it to the 2' setback. Mr. Moretti asked what the height difference was between the old garage and the new, and Mr. Ellison said that the new one would be somewhat taller because of the peaked roof. Mr. Moretti asked whether the window would face toward the neighbor, and Mr. Ellison said that the windows that faced the street would match the existing house and noted that the garage on the other side of them was a 3-story structure.

SPEAKING IN OPPOSITION TO THE PETITION OR SPEAKING TO, FOR, OR AGAINST THE PETITION

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

*Mr. Rheume made a motion to **grant** the variance as presented and advertised, with the following stipulation:*

- 1) that the structure be set back a minimum of two feet from the right side of the property.*

Vice-Chair Parrott seconded the motion.

Mr. Rheume stated that granting the variance would not be contrary to the public interest because it would keep the overall characteristics of the neighborhood and would also be in keeping with the general appearance of things. The existing garage was very dated, and what was proposed was attractive. His main concern was how close it would be to the neighboring properties, but the stipulation pushed it back some and restored the public interest in the placement of the garage in terms of being able to access for it for maintenance on both properties, and it would also resolve fire safety issues, so the spirit of the Ordinance would be observed. A lot of relief was being asked for, and the Board normally required a 10-foot setback, so it would be an 80% reduction from what was required. The applicant would push it away back, away from the property. With the 2' relief and by improving the situation, the Board could say that it would be doing what the applicant wanted, which was to keep space between the two properties and address light and air. Granting the variance would do substantial justice because it would improve the applicant's situation and would add another bay for a car as well as an additional storage area above. The value of surrounding properties criteria would be met because

the outdated garage would be replaced and it would be set back and would be more pleasing in appearance, which would improve the value of all properties. As to the hardship criteria, the special condition was an existing structure that had been in place for some time that was more non-conforming, and the stipulation would push it back from the property line, so Mr. Rheume felt that it was a reasonable request.

Vice-Chair Parrott concurred with Mr. Rheume and noted that the Board was requesting the 2' setback for the advantage of both property owners, and he also hoped that the tree would survive.

The motion passed with all in favor, 6-0.

6) Case # 6-6

Petitioners: Michael Brandzel & Helen Long

Property: 39 Dearborn Street (Dearborn Lane)

Assessor Plan 140, Lot 3

Zoning District: General Residence A

Description: Construct a rear shed dormer and single story addition.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.321 to allow a lawful nonconforming structure to be extended or structurally altered without conforming to the requirements of the Ordinance.
2. A Variance from Section 10.521 to allow a 3'± rear yard setback where 20' is required for a 14'± extension of a previously approved rear dormer and for a 6'± x 15'± single story addition.

Mr. LeMay resumed his seat and Mr. Johnson returned to alternate status.

SPEAKING IN FAVOR OF THE PETITION

Chairman Witham stated that the applicant was before the Board to explain what the Historic District Commission (HDC) wanted and how it would meet the criteria.

The owners Mr. Michael Brandzel and Ms. Helen Long were present to speak to the petition. Mr. Brandzel stated that they appreciated the four variances that the Board granted in April, but the design had to be modified for the HDC, who wanted to preserve the original façade of the front of the house. Consequently, they followed the HDC's suggestions and received their approval. They removed the front entry porch that was not original to the house, and lost 80 s.f., but the HDC suggested that they enlarge the kitchen 90 s.f. to the edge of the existing deck. They decided to remove the deck altogether but wanted to trade the 80 s.f. of the entry porch for the 90 s.f. that would be added on to the kitchen. The other variance for the continuation of the shed dormer on the rear of the house for the bathroom was requested so that they could extend it another 14 feet to gain head room in the front bedroom. Mr. Brandzel said he hoped they could continue the shed dormer and gain relief for the other bedroom. He noted that the Board previously granted them a variance to extend the living room 8 feet, but they

pulled it back 4 feet for the HDC and kept the roofline the same so that the front façade would still read as an old Cape.

Mr. Mulligan asked whether the only relief needed was the rear yard setback. Mr. Brandzel agreed and said it was 6' along the rear line.

SPEAKING IN OPPOSITION TO THE PETITION OR SPEAKING TO, FOR, OR AGAINST THE PETITION

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

*Mr. Mulligan made a motion to **grant** the variance as presented and advertised, with the following stipulation:*

- 1) *that the prior approved stipulation is carried forward.*

Mr. Moretti seconded the motion.

Mr. Mulligan stated that granting the variance would not be contrary to the public interest or to the spirit of the Ordinance because it would not change the fundamental characteristics of the residential neighborhood, nor would there be any threat to the public's health, safety and welfare if the Board permitted the encroachment into the rear yard setback. What drove the changes were the recommendations and requirements of the HDC, so that enabled the Board to find that the proposal met that criteria. Granting the variance would do substantial justice because the loss to the applicant would be fairly extreme and not outweighed by any corresponding benefit to the public. It wasn't appropriate for the applicant to go back and forth, and the proposal was the direct result of a compromise. It would improve the value of surrounding properties, and that was the reason the applicant had received approvals thus far. As to the unnecessary hardship criteria, the lot was unique in that the tidal buffer affected the building envelope, and the front yard was not really a front yard, so literal enforcement of the other yard setbacks made no sense on that particular property. The use was a reasonable one because additions to a small home were absolutely reasonable.

Mr. Moretti concurred with Mr. Mulligan, adding that the HDC did a great job putting it together.

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

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- 7) Case # 6-7
Petitioner: Lonza Biologics, Inc.
Property: 101 International Drive
Assessor Plan 305, Lot 6
Zoning District: Airport Business Commercial
Description: Install two new generators and construct above ground storage tanks.
Requests: Review and recommend the following Variance from the Pease Development Authority Zoning Ordinance:

1. A Variance from Section 308.02 (c) to allow above ground storage tanks (AST) exceeding 2,000 gallon capacity for two existing and two proposed generators.

SPEAKING IN FAVOR OF THE PETITION

Mr. Patrick Crimmins of Tighe and Bond, Mr. Paul Fleming of Lonza, and Mr. Michael Mates of the Pease Development Authority (PDA) were present to speak to the petition.

Mr. Crimmins stated that Lonza was proposing to fit up a portion of a previously-constructed expansion that was currently vacant at their building, a 300,000 s.f. expansion built in 2008. They wanted to fit up 65k s.f. of it and more in the future. As part of it, there were proposed site improvements that would include two new generators. The two new generators had tanks that exceeded 2,000 gallons, and they were seeking relief for the 2,000-gallon capacity. There was no definition of above-ground storage tanks in the Ordinance, so he concluded that the hazardous materials were in fact storage of petroleum products such as diesel, which was the reason they were before the Board. Mr. Crimmins showed the site plan and said the building expansion would be in the rear utility yard. They also had two existing tanks that exceed 2,000 gallons, and the PDA has asked that they seek retroactive variances for those as well.

Mr. Crimmins went through the criteria, emphasizing that the site was an existing manufacturing industrial use that already had two tanks that had been there for 15 years. The plans and specifications for the existing tanks had already been approved by DES, and the new ones would be approved by them as well. He also noted that Lonza needed specific controls, temperatures and sterility, and they could not lose power, so granting the variance would allow Lonza to continue to operate during a power outage and not lose revenue or impact the facility.

Mr. LeMay asked for elaboration on the safety aspects of the tanks. Mr. Fleming stated that the tanks were regulated by the New Hampshire DES. He described the tanks, saying they if they leaked, the monitors would pick up on it and alert them so that they could contain it. Mr. LeMay asked whether there were other restrictions because he felt it was a lot of fuel. Mr. Fleming replied that there were spill containment systems outside for emergency situations, but there were no laws or requirements for them to do anything different. Mr. Rheume asked why the two existing diesel generators and associated tanks were not previously granted a variance. Mr. Mates replied that the issue had gotten away from them but had recently come to their attention.

Vice-Chair Parrott asked whether the tanks had a design life, what kind it was and what happened at the end of that period of time. Mr. Fleming replied that the tanks were inspected once or twice a year, and the existing ones had been in service since the early 1990s with no problems. Vice-Chair Parrott said that he used to own underground tanks that had to be taken care of after 30 years, and he asked whether the above-ground tanks had similar requirements. None of the applicants knew the answer.

SPEAKING IN OPPOSITION TO THE PETITION OR SPEAKING TO, FOR, OR AGAINST THE PETITION

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

*Vice-Chair Parrott made a motion to **recommend favorable approval** to Pease Development Authority (PDA and also asked that his questions be forwarded to the PDA as well. Mr. LeMay seconded the motion.*

Vice-Chair Parrott stated that the first criteria for the PDA about no adverse effect or diminution of surrounding property values would be met because the applicant had clearly taken safety precautions relating to adverse effects, and if anything went wrong, they would be the first to know it. The surrounding properties were owned by Pease. There was a wide buffer zone of open land around them, so anything nearby would be unlikely to be adversely affected. It would benefit the public interest because it was necessary to maintain the environment when producing high-tech products, and it was understandable that they needed reliable power because a shutdown couldn't be withstood. Denying the application would result in unnecessary hardship to the person seeking it because there was every reason to take extraordinary precautions to maintain uninterrupted power supply for that kind of manufacturing operation. It would do substantial justice because there would be no overriding benefit to the public to say that it should be curtailed or not approved, so the tip clearly went to the applicant. The proposed use would not be contrary to the spirit of the Zoning Rule, and the Zoning Rule was the Pease regulations, which encouraged development. The facility had been there and operated successfully for a long time, so they clear met the first criteria.

Mr. LeMay stated that he had nothing to add.

Chairman Witham asked Vice-Chair Parrott whether he would like the applicant to provide the Board with the lifespan of the tanks or the recommendation to the PDA that they should direct the information to the Planning Department. Vice-Chair Parrott replied that he wanted just a recommendation to the PDA that they direct the information to the Planning Department.

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

8) Case # 6-8

Petitioners: Joseph & Lindsey B. Donohue

Property: 336 Union Street

Assessor Plan 134, Lot 58

Zoning District: General Residence A

Description: Convert single family dwelling to two dwelling units.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.521 to allow a lot area per dwelling unit of 2,178 s.f. ± where 7,500 s.f. is required.
2. A Variance from Section 10.1112.30 to allow two off-street parking spaces to be provided where four off-street parking spaces are required.

SPEAKING IN FAVOR OF THE PETITION

The applicant was not present to speak to the petition. Mr. Mulligan stated that the Planning Department had comments indicating that the applicant needed an additional variance. Chairman

Witham noted that it should be advertised and asked whether the petition should be postponed. Mr. Mulligan felt that it would be harsh to deny it, given that the Board expected the applicant to show up with additional information. He reasoned that something must have happened.

*Mr. Mulligan made a motion to **postpone** the variance. Mr. LeMay seconded the motion.*

Chairman Witham suggested that the motion should include the fact that the Planning Department would address the advertising. Mr. Rheame noted that the Board was treating the application differently from the previous no-show one, but because there appeared to be an issue with the advertising and could include additional information that may have been a problem for the applicant, that was the distinction from the other petition.

SPEAKING IN OPPOSITION TO THE PETITION OR SPEAKING TO, FOR, OR AGAINST THE PETITION

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

*The motion to postpone the petition to the July meeting and have the Planning Department address the advertising issue of the additional variance request **passed** with all in favor, 7-0.*

9) Case # 6-9

Petitioner: Rhonda E. Stacy-Coyle Revocable Trust, Rhonda E. Stacy-Coyle, Trustee

Property: 36 Richards Avenue

Assessor Plan 136, Lot 14

Zoning District: Mixed Residential Office

Description: Construct a 2.5'± deep x 4'± wide rear gabled roof.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.321 to allow a lawful nonconforming structure to be extended or structurally altered without conforming to the requirements of the Ordinance.
2. A Variance from Section 10.521 to allow a 2.5'± rear yard setback where 15' is required.
3. A Variance from Section 10.521 to allow 68.5%± building coverage where 40% is the maximum allowed.

SPEAKING IN FAVOR OF THE PETITION

The project builder Mr. Patrick Murphy stated that a small gabled roof was attached to the existing structure that was less than 2-1/2' deep and was designed to divert water and snow from the steps below. Mr. Mulligan asked whether the roof went over the existing door and would project out from the house, and Mr. Murphy agreed. Mr. LeMay asked whether the submitted photos were illustrations of other gabled roofs, and Mr. Murphy said they were pictures of the actual building itself.

**SPEAKING IN OPPOSITION TO THE PETITION OR
SPEAKING TO, FOR, OR AGAINST THE PETITION**

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

*Mr. Mulligan made a motion to **grant** the variance as presented and advertised. Mr. Johnson seconded the motion.*

Mr. Mulligan stated that there was minimal relief requested. Granting the variance would not be contrary to the public interest or to the spirit of the Ordinance because the neighborhood would not change and the health, safety and welfare would not be affected by the minimal modification of the modest structure. Substantial justice would be met because there would be no corresponding benefit to the general public that wouldn't be extremely outweighed by the loss to the applicant if the petition was denied. The applicant was reasonably asking to keep the elements away from the door. It would only modestly impact the setbacks. It would not diminish surrounding property values because the Portsmouth Housing Authority and the Frank Jones apartment building faced it, and the properties across Richards Avenue would not see it or be affected by it. As to unnecessary hardship, it was a unique property, basically a cottage surrounded by asphalt, and it violated all the setbacks on all sides, so any modification would require relief. There would be no fair and substantial relationship to setback requirements as they applied to the property because it was a very modest relief.

Mr. Johnson concurred with Mr. Mulligan and said that he nothing to add.

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

III. OTHER BUSINESS

Chairman Witham told the Board that he would keep them posted about the seminar date. He also noted that the City Council was grappling with short-term rental issues and were redefining the bed and breakfast one by currently making a special exception.

IV. ADJOURNMENT

*It was moved, seconded and **passed** by unanimous voice vote to adjourn the meeting at 8:45 p.m.*

Respectfully submitted,

Joann Breault
Recording Secretary

These minutes were approved at the July 21, 2015 Board of Adjustment meeting>