

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

**7:00 P.M.**

**March 26, 2024**

**MEMBERS PRESENT:** Phyllis Eldridge, Chair; Beth Margeson, Vice Chair; Members David Rheaume, Thomas Rossi, Paul Mannle, Jeffrey Mattson, Thomas Nies, and Alternate Jody Record

**MEMBERS EXCUSED:** ML Geffert, Alternate

**ALSO PRESENT:** Jillian Harris, Planning Department

---

Chair Eldridge called the meeting to order at 7:00 p.m. She said there was a request to postpone New Business Item II. B, Atlas Commons LLC (Owner) for property at 581 Lafayette Road.

*Mr. Rossi moved to take the item out of order, seconded by Mr. Mannle. The motion **passed** unanimously, 7-0.*

Chair Eldridge then read the item into the record.

*Mr. Mannle moved to **postpone** the item, seconded by Mr. Rossi.*

Mr. Mannle said it was a simple request that the Board granted all the time. Mr. Rossi asked if there should be a date certain to postpone the petition to. The Board agreed.

*Mr. Mannle **amended** his motion and moved to **postpone** the item to the April 16 meeting, seconded by Mr. Rossi. The motion **passed** unanimously, 7-0.*

Chair Eldridge said there was also a request to withdraw by the applicant for New Business Item II.C, Lonza Biologics (Owner) for property located at 101 International Drive, which required no action from the Board.

**I. OLD BUSINESS**

**A. Request for 1-Year Extension - 411 South Street (LU-22-67)**

**DECISION OF THE BOARD**

*Mr. Mannle moved to **grant** the one-year extension, seconded by Mr. Rossi.*

Mr. Rheaume said he would support the motion but found that the applicant's explanation for the reason for postponing was wanting. He said the individual sounded like they were having job issues but that it didn't relate to why they needed a one-year extension. Mr. Rossi said it must be a financial hardship and that he would not want to spend a lot of money on a renovation if he was out of a job, so he was more sympathetic to the rationale than other cases the Board had seen.

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

## **II. NEW BUSINESS**

- A.** The request of **Cherie A Holmes** and **Yvonne P Goldsberry (Owners)**, for property located at **45 Richmond Street** whereas relief is needed for the following: 1) Variance from Section 10.515.14 to install a mechanical unit 8.5 feet from the side property line whereas 10 feet is required. Said property is located on Assessor Map 108 Lot 18 and lies within the Mixed Residential Office (MRO) and Historic District. (LU-24-19)

### **SPEAKING TO THE PETITION**

[Timestamp 7:43] Project architect Anne Whitney was present on behalf of the applicant. She said there was enough setback to place the heat pump and noted that the Historic District Commission (HDC) approved the fencing around it, so it seemed like a good place to locate the generator. She said the fence was tall on that side and the property line got narrower as it went back. She said the location of the windows also made it difficult. She showed a few photos and reviewed the criteria.

There were no questions from the Board. Chair Eldridge opened the public hearing.

### **SPEAKING TO, FOR, OR AGAINST THE PETITION**

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

### **DECISION OF THE BOARD**

*Mr. Rossi moved to **grant** the variance request as presented and advertised, seconded by Mr. Mannle.*

Mr. Rossi said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said there was no public interest that would be served by not allowing the variance. He said the proposed location for the generator was sort of in a no-man's land between the two properties and didn't stick out like it didn't belong there, and the HVAC system also had a presence in that area. He said substantial justice would be done because there would be no loss to the public that would outweigh the benefit to the applicant. He said granting the variance would not diminish the values of surrounding properties, noting that the unit would be quiet and would barely run except in an emergency. He said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship due to the special conditions of the property, which were the

limited size and shape of the lot and the undesirability of alternative locations for the unit which would, if placed in the back of the property, inhibit the owners' enjoyment of the land unnecessarily. Mr. Mannle concurred and had nothing to add.

*The motion passed unanimously, 7-0.*

- B. REQUEST TO POSTPONE** The request of **Atlas Commons LLC (Owner)**, for property located at **581 Lafayette Road** whereas relief is needed for after-the-fact installation of an awning sign which requires the following: 1) Variance from Section 10.1251.20 to allow a 32 square foot awning sign whereas 20 square feet is allowed. Said property is located on Assessor Map 229 Lot 8B and lies within the Gateway Corridor (G1) District. **REQUEST TO POSTPONE (LU-24-1)**

### **DECISION OF THE BOARD**

The petition was **postponed** to the April 16 meeting.

- C. REQUEST TO WITHDRAW** The request of **Lonza Biologics (Owner)**, for property located at **101 International Drive** to add four (4) above ground storage tanks which requires the following: 1) from Section 308.02(c) of the Pease Development Ordinance to allow an above ground storage tank (AST) exceeding a 2,000 gallon capacity per facility. Said property is located on Assessor Map 305 Lot 6 and lies within the Airport Business Commercial (ABC) District. **REQUEST TO WITHDRAW (LU-23-108)**

The applicant **withdrew** the petition, and there was no action needed from the Board.

- D.** The request of **Henrik Edin and Kathleen Edin (Owners)**, for property located at **85 Pinehurst Road** whereas relief is needed to construct a second floor addition to the existing attached garage which requires the following: 1) Variance from Section 10.521 to allow a) a 4.5 foot side yard where 10 feet is required; b) a building coverage of 29% where 25% is allowed; 2) 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; and 3) Variance from Section 10.515.14 to install a mechanical unit 2.5 feet from the left side property line whereas 10 feet is required. Said property is located on Assessor Map 221 Lot 73 and lies within the General Residence A (GRA) District. (LU-24-22)

### **SPEAKING TO THE PETITION**

[Timestamp 15:41] The applicant Henrik Edin was present and said he bought the property in 2021 and wanted to build an addition on top of the existing attached garage within the required setback from the property line. He said the space would be used for two bedrooms and would convert an existing bedroom into a home office and laundry space that would not expand the existing building coverage. He noted that there was an existing raised patio behind the garage that was built by the

previous owner that made the existing building coverage exceed the maximum 25 percent. He said he discovered that a permit was not filed for constructing the patio and that he intended to file an after-the-fact permit. He said he also wanted to install a mini split unit beside the side setback. He reviewed the criteria and said they would be met.

[Timestamp 19:07] Mr. Rheume verified that the existing garage was within the 10-ft setback, which was 4-1/2 feet from the property line. He said the Planning Department comments indicated that the patio met the required setbacks for an accessory structure, which meant that it was five feet from the property line and less than 100 square feet in total area, and therefore could be 5 feet from the property line. Ms. Harris said it was greater than the 100 square feet so it would be set back from any lot line at least the height of the building or the applicable yard requirement, whichever was less. She said in the applicant's case, the applicant clarified to the City Staff that the patio varied from 22 inches to 38 inches, so they would look at a setback of about 3.2 feet for the greatest height of that patio. Mr. Rossi referred to the relief requested with regard to the left side setback. He said it was 4.5 feet but wasn't in the diagram, and he asked if the mechanical unit was closer than 4.5 feet. Ms. Harris said it was a separate item. Mr. Rossi said it wasn't in the table of existing and proposed conditions but was just in the text. He asked if the table should read 2.5 feet. Ms. Harris said an asterisk referenced the mechanical unit. Mr. Rossi then said the way it was phrased was adequate to provide the relief needed for the mechanical.

Mr. Nies said the patio was considered an accessory structure but the definition of an accessory structure in the ordinance was that it is a subordinate building having walls and a roof. He asked if it was common practice that accessory structures were extended to items without a roof. Ms. Harris said it would be under 'structure' rather than 'building', which was defined separately. She said the City looked at a structure as any production or piece of work artificially built up or composed of parts and joined together in some definite matter. She said in this case, under the definition of accessory building or structure, the City looked at the language that cites that it would be attached in a substantial manner to the main building in order to be considered part of the main building. Mr. Nies said he thought there was confusion in the definition. Ms. Harris said the definition contemplated structure as well.

Chair Eldridge opened the public hearing.

### **SPEAKING TO, FOR, OR AGAINST THE PETITION**

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

### **DECISION OF THE BOARD**

*Mr. Rossi moved to **grant** the variance requests as presented and advertised, seconded by Mr. Mannle.*

[Timestamp 24:52] Mr. Rossi said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said the purpose of the setback requirements related to the specific variances being requested was to preserve open space and light,

and there was abundant room between the applicant's structure and the one on the adjacent property, and approval of the variance would not negatively impact the feeling of space and light between the structure and the one on the adjacent property. He said substantial justice would be done because there would be no loss to the public with regard to allowing the variance request to move forward, and therefore nothing that would outweigh the benefit to the applicant. He said granting the variances would not diminish the values of surrounding properties because the project design was nice and comported very well with the rest of the neighborhood and would only enhance the value of the surrounding properties by bringing up the value of the applicant's property. He said the hardship was the special conditions of the property that distinguished it from other properties in the area. With regard to the lot coverage, he said the special condition was that the structure in question is a patio that is only 18 inches or more above grade, so it isn't a bulky structure, and that was a special condition that leaned toward his saying that this aspect of the zoning ordinance is really not meant to prevent this sort of a structure where it is located. Particularly in the applicant's case, he thought it would be silly of the Board to require the owner to remove that structure at this point in time, especially since the owner had nothing to do with the noncompliance. He said there was no other logical space to put the mechanical unit on the property, which was the special condition that weighed in favor of granting that variance.

Mr. Mannle concurred. He said that, for an application that seemed to have a lot going on, the variance request was asking for very little. He said the left yard setback had not changed except for the mechanical unit, which wasn't listed other than adding it, and the building coverage had not changed at all. He said there was a raised structure that added to it that happened in the past 15 years, but given the current status, the request was minimal.

*The motion passed unanimously, 7-0.*

- E. The request of **Susan Javurek and Michael Roche (Owners)**, for property located at **45 Kent Street** whereas relief is needed to demolish an existing 1-story addition, reconstruct a two-story addition and add a deck on the rear of the existing residential structure and relocate a bulkhead which requires the following: 1) Variance from Section 10.521 to a) allow a 5.5 foot left side yard where 10 feet is required; and b) to allow a building coverage of 35% where 25% is allowed; and 2) 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 located on Assessor Map 113 Lot 145 and lies within the General Residence A (GRA) District. (LU-24-25)

## **SPEAKING TO THE PETITION**

[Timestamp 30:15] Attorney Monica Kaiser was present on behalf of the applicant, along with the applicant Susan Javurek and project engineer John Chagnon. Attorney Kaiser said there was an existing two-story house with a front porch and stairs, and a one-story addition and a bulkhead, concrete stairs, and a retaining wall. She said another area has a 3-season room take took up one

floor and would be improved but not expanded. She said they proposed to remove the existing addition on the back of the house, the concrete stairs, and the bulkhead, and construct a two-story addition. She said there would be new stairs, retaining wall, and a new deck on the back of the house. She said they needed a variance for the bulkhead that was relocated from the driveway side to the north side of the property because it was in the side setback and the building coverage exceeded what was permitted. She said the ordinance was unclear and counted more things as coverage than before because it measured from the existing grade instead of just the ground. She said the proposed addition looked big but took the place of the existing addition and the other items, which she thought made a difference. She asked if there were questions at this point.

[Timestamp 35:35] Mr. Rossi asked if the proposed deck was included in the building coverage calculation. Attorney Kaiser said it was. She noted that the chart indicated the existing building coverage and all the numbers added up to the 28 percent, but she didn't know if the concrete steps had been counted. She said the proposed conditions indicated that the main structure had changed and gone from 1,071 square feet to 1,333 square feet, which was the biggest change. She said the garage was counted and the deck/porch was counted as the enlarged deck, and the stairs and slightly larger bulkhead were all counted as proposed building coverage. She said the driveway area on the proposed was similar to the existing, but there was a change in grade from the driveway that would not change and there were some new landscaping features in addition to the retaining wall and the steps, which was the reason the bulkhead was moved. Mr. Mattson said the addition itself looked like it was entirely within all the yard setbacks, and he asked if the bulkhead was over 18 inches tall. Mr. Chagnon said the bulkhead could be a sloped one and it counted until it got to be more than 18 inches above the ground. He said the entirety of it is counted due to the way it was constructed.

[Timestamp 41:10] Vice-Chair Margeson asked Attorney Kaiser to review again what was included in the proposed building coverage. Attorney Kaiser said the addition was included within the main structure. Mr. Chagnon said the addition was 462 square feet, which was included with the house. He said the back deck was 99 square feet, the area in the front called a porch was 32 square feet, and together they were 131 square feet. Attorney Kaiser further explained that the existing was 51 square feet of front porch and back porch, and in the proposed, the number went from 51 square feet to 131 square feet, which included the deck off the back of the addition.

[Timestamp 43:40] Mr. Rossi said the applicant highlighted quite a few lots near the house that were nonconforming, and he asked if there was a quantitative analysis and if the other lots were similarly nonconforming. Attorney Kaiser explained that Exhibit F was a markup of the tax map. She said she looked at each tax card in the neighborhood, including the ones on the tax map that looked like decent-sized houses. She noted that the tax map hadn't been updated to reflect new construction. She said she added the footprint information for the structures the best that she could and that it wasn't a precise number but it was clear that a number of those properties had one- or two-car garages in the back and some had substantial additions and had not removed existing garages or sheds. She said some of them were over the 30 percent building coverage. She said some lots on Sherburne Road were recently unmerged and built upon, and those lots may have over 30 percent building coverage, and Elwyn Avenue had a few new builds on substandard lots. She said she would have to return with specific information, however. She reviewed the criteria in full.

The Board had no further questions. Chair Eldridge opened the public hearing.

### **SPEAKING TO, FOR, OR AGAINST THE PETITION**

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

### **DISCUSSION OF THE BOARD**

[Timestamp 53:04] Mr. Rossi said he would have appreciated a more quantitative analysis of the lot coverages in the surrounding properties, but looking at the tax map and the corner of Lincoln Avenue and Kent Street, it seemed apparent that the lot coverage with the structure was going to be at least equal to if not exceeding what was being proposed than the current variance request. He said Lot 72 across the street on Lincoln Avenue was similar, and both of those were legitimately within the neighborhood and seemed to have similar kinds of coverages as to what was being proposed. He said another factor that weighed in favor of the variance request was the open space behind it, the parkland in the back of the lot, and the addition would not encroach any further on the side setbacks because the only real action was towards the rear of the property. He said even though 35 percent building coverage was a big number, he could see it.

### **DECISION OF THE BOARD**

*Mr. Rheume moved to **grant** the variance requests as presented and advertised, seconded by Mr. Mattson.*

[Timestamp 54:56] Mr. Rheume said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said it was reflective of the general characteristics of the neighborhood. He said the applicant might be somewhat imprecise but made a good faith effort and, looking at it without precise measuring, the applicant made a good argument that a lot of those properties were undersized relating to what the lot requirement is to the GRA. He said the lot was typical of the others at about 5,500 square feet or so. He said there was a substantial history of these properties being built out to a fair degree above what is required by the ordinance for the GRA, so the applicant demonstrated that. He said the proposed addition would be in the back side of the house and would not affect the street view significantly. He said the height, even though it was two stories, was covered up by the front of the house, so for the general purposes of the ordinance in terms of the look and feel of the neighborhood, nothing was changing. He said granting the variances would do substantial justice. He said there was nothing in the public interest that would outweigh the applicant's desire for a more effective use of their lot and the addition they needed for a decent-sized home that wasn't gigantic. He said a person walking by would not see much of a change in the bulk of the changes on the back side of the property. He said granting the variances would not diminish the values of surrounding properties because the addition was tasteful and not overly excessive and was largely in conformance with the zoning ordinance requirements and would not affect light and air on either side excessively. He said the hardship was that the lot was smaller than required in the GRA, which gave some leeway for saying there was a hardship

from a lot coverage standpoint. He said there was required relief on the side yard setback but it was a bulkhead, which was a minor structure that no one would really notice and would not impose on the neighbor's light and air. He said it was really about the lot coverage, 10 percent above what was allowed, and that it was about 7 or 8 percent than what was currently there. He agreed with Mr. Rossi that it was open to the back, so strictly applying the zoning ordinance to this particular parcel would not be appropriate. He said there was enough space in the back that the look and feel of it was such that it would not feel imposing on neighboring properties. He said the request was a reasonable one, an expansion of an existing residential use in a tasteful manner and in keeping to the overall height of the structure and within the setback requirements.

Mr. Mattson concurred. He said the variances being asked for seemed more intense than they really were because for the setback, it was really to the bulkhead rather than the addition itself, and pertaining to the building coverage, it was an undersized lot so it didn't take a lot of extra square footage to go up in percentage. He said it was a reasonable request.

*The motion passed unanimously, 7-0.*

At this point in the meeting, Vice-Chair Margeson suggested a special meeting at which the Board could review their rules, noting that they hadn't looked at them in about three years. Chair Eldridge said there was also the question of a structure v. a building, which was something the Board had issues with before, and that it would also be a good time to ask questions about other confusing issues. Ms. Harris suggested a workshop. Mr. Rheume said in the past it was typically done as a work session and was publicly noticed but there was no public hearing, and it was an opportunity for members to bring up questions and recommendations for changes in the rules. He recommended that the questions be provided in advance so they could be placed on the agenda. Chair Eldridge said she would discuss it with the Planning Department and set up a time.

### **III. ADJOURNMENT**

The meeting was adjourned at 8:02 p.m.

Respectfully submitted,

Joann Breault  
BOA Recording Secretary