

**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 18, 2024

MEMBERS PRESENT: Phyllis Eldridge, Chair; David Rheume; Thomas Rossi; Paul Mannle; Jeffrey Mattson; Thomas Nies; ML Geffert, Alternate

MEMBERS EXCUSED: Beth Margeson, Vice Chair; Jody Record, Alternate

ALSO PRESENT: Jillian Harris, Planning Department

Chair Eldridge called the meeting to order at 7:00 p.m. She said Petitions F through J would be heard at the June 25 meeting and that Alternate ML Geffert would take a voting seat.

I. APPROVAL OF MINUTES

A. Approval of the May 21, 2024 and May 28, 2024 meeting minutes.

May 21 Minutes:

Mr. Nies said that he wanted to add the following paragraph on page 7, under Decision of the Board and before the motion was made: “Mr. Nies questioned why the applicant needed a new variance. He said the proposed fence is in the same location and is the same height as what was previously approved and it is not connected to the retaining wall to form one structure, so the height of the two should not be combined. Staff explained that the project was significantly changed by the addition of the retaining wall from what was previously approved and so needed to be reauthorized”.

Mr. Nies asked that on page 8, in the last sentence of the first paragraph, the phrase “and the fence’s height hasn’t changed” replace the phrase “and it hasn’t changed” to clarify that it was the fence that had not changed. The sentence was amended to read as follows: “He said the way the property increased in back in height is really a condition that makes it difficult to construct a fence that provides privacy and safety without having it relatively high from the street, and the fence’s height hasn’t changed since the last variance was granted.”

May 28 Minutes:

Mr. Nies asked that on page 11, in the second line of the paragraph under Speaking To, For, or Against the Petition, the word ‘raising’ be changed to ‘razing’ so that the sentence now reads:

“Attorney Mulligan said the property was not in the Historic District and the owner would be within his rights to make substantial changes up to and including razing the structure”.

Mr. Nies asked that on page 12, at the end of the first paragraph, the following sentence be added: “Mr. Nies also noted that even the applicant’s attorney admitted it was possible to fully comply with the ordinance by putting four residences into one building consistent with the provisions of the zoning ordinance. Therefore, the property could be used in strict conformance with the ordinance”.

*Mr. Mannle moved to **approve** both sets of minutes as **amended**, seconded by Mr. Rossi. The motion **passed** unanimously, 6-0, with Ms. Geffert abstaining from the motion.*

II. NEW BUSINESS

Chair Eldridge recused herself from the following petition.

*Mr. Rossi nominated Mr. Rheume as Acting Chair, seconded by Ms. Geffert. The motion **passed** unanimously, 6-0.*

- A. The request of **Kimberly Rosensteel and Timothy Sullivan (Owners)**, for property located at **63 Humphreys Court** whereas relief is needed to install a mini-split air conditioning system, which requires the following relief: 1) Variance from Section 10.515.14 to install a mechanical unit 2.5 feet from the side property line whereas 10 feet is required. Said property is located on Assessor Map 101 Lot 38 and lies within the General Residence B (GRB) and Historic Districts. (LU-24-71)

SPEAKING TO THE PETITION

[Timestamp 6:18] The applicant Tim Sullivan was present and reviewed the petition. He said there were three potential locations for the air conditioning system’s external unit, which he described. He reviewed the criteria and said they would be met.

[Timestamp 10:58] Mr. Nies asked why the applicant did not want to place the unit on the west side of his property. Mr. Sullivan said the unit would be an eyesore to the community garden. Acting Chair Rheume asked if there was a preference for either location from a mechanical standpoint. Mr. Sullivan said the air conditioning company said either location would be possible and neither location would have a significant impact on the line sets. He said he preferred to put the unit farther north because of the lines and because it would fall behind a small fence to make it less noticeable. Acting Chair Rheume asked if the unit would be 10 feet or more away from the property line. Mr. Sullivan said he wasn’t sure but even if it was within 10 feet, he thought the effect on the neighbor’s property would be less noisy than the current air conditioning system. Acting Chair Rheume said the ordinance stated that the unit had to be 10 feet away from all property lines and it was currently advertised for the right side property line. He asked if the applicant could place it 10 feet away from the back property line. Mr. Sullivan agreed and said he could put the unit in a more forward location and move the fence up so that the unit was minimally noticeable from the street.

Acting Chair Rheume opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Acting Chair Rheume closed the public hearing.

DECISION OF THE BOARD

Acting Chair Rheume noted that the Planning Staff's recommendation was that any motion include that the location of the unit may change as a result of the review and approval of the permit as long as it is consistent with the side setback, as depicted in the application materials. He said the Board had a concern with the back setback as well and that the unit would have to conform with that.

*Mr. Mannle moved to **grant** the variance for the petition as presented, with the following Staff condition:*

- 1. The location of the unit may change as a result of the review and approval of the permit as long as it is consistent with the side setback, as depicted in the application materials.*

Mr. Mattson seconded the motion.

Mr. Mannle said it was a typical request, especially from the south end. He said the applicant did his due diligence regarding the best place to locate the unit and the unit having the least impact but still being of benefit. He said the request was minimal and the structure was already noncompliant. He said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said the applicant was doing his best to shield the unit from public view. He said it would do substantial justice and would not diminish the values of surrounding properties, noting that the neighbor had a similar unit. He said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because the property had special conditions that distinguished it from other properties in the area, and owing to those special conditions, a fair and substantial relationship does not exist between the general public purposes of the ordinance's provision and the specific application of that property, and the proposed use is a reasonable one; or owing to the special conditions, the property cannot be reasonably used in strict conformance with the ordinance and the variance is therefore necessary. He said he believed that the property does have special conditions, given what's already on the property. He noted that those special conditions applied to nearly every property in the south end. For those reasons, he said the variance should be granted with the Staff's recommended condition.

Mr. Mattson said the lot is undersized and, based on the location of the structure of the property, those special conditions justify granting the variance and gives two potential options for putting it on the side yard. Acting Chair Rheume said he thought having the unit on the opposite side would be an advantage because it was more of an open area and not up against a neighboring property, but he said the unit was a substantial double decker and had more of a sight aspect to it than more

traditional condenser units, so he thought it made sense that the applicant found a location that would tuck the unit in and keep its visual aspect to a minimum.

The motion passed unanimously, 6-0.

Chair Eldridge returned to her seat and Acting Chair Rheaume returned to member status.

- B.** The request of **Madeline Lockwood and Drew Morgan (Owners)**, for property located at **42 Sewall Road** whereas relief is needed for a second-story addition and construction of a front porch to the existing home, which requires the following relief: 1) Variance from Section 10.521 to a) allow a 20 foot front yard where 30 feet is required; b) to allow a building coverage of 21.5% where 20% is the maximum permitted; 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 170 Lot 13 and lies within the Single Residence B (SRB) District. (LU-24-70)

SPEAKING TO THE PETITION

[Timestamp 22:55] The owners Madeline Lockwood Morgan and Drew Morgan were present. Ms. Morgan reviewed the petition. She noted that they were growing out of their current home and needed to expand. She said the footprint would not change. Mr. Morgan reviewed the criteria.

[Timestamp 26:26] Mr. Rossi said he understood the aesthetic that the applicants wanted and how the front porch added to it. He asked Planning Staff member Ms. Harris if it would be reasonable to stipulate that the front porch could not be enclosed at a future date. He said the setbacks were to ensure that people didn't have view obstructions, and without an enclosed front porch, the view would still be pretty open. Ms. Harris agreed. Mr. Rheaume said the site plan showed that there were about two feet of the existing house in the right yard 10-ft setback. He said the existing garage looked like it had a much taller roof and asked if part of the expansion would cover the garage. The applicant said it would not and that it would be the same height as what it currently was. Mr. Rheaume asked what was unique about the property's characteristics in terms of hardship. Ms. Morgan said she didn't know what made the property unique other than other people in the neighborhood wanted to do the same thing. Mr. Rheaume said that was one of his concerns. He asked what the setback distance from the road was of the Spinney Road house that was shown as an example. Ms. Morgan said she didn't know. Mr. Rheaume said it looked like it was set back farther.

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 31:05] Chair Eldridge said the Board had two letters of support. Mr. Rossi said one of the letters was not helpful because it said the neighbor would like to do the same thing. He said the Board would be allowing a reasonably conforming structure to be substantially nonconforming in regard to the front yard setback, where the other properties in the immediate neighborhood were also reasonably conforming, so there was not only a potential but a likelihood that the Board would be setting a domino chain reaction in effect within an area that would lead to more nonconformance. Regarding the question of hardship, he said there were two things that were of interest about the applicant's property in that regard and it may also apply to some but not all of the neighboring properties pertaining to the reason for the setback being to preserve sight lines, open air, space and so on. He said the lot area is smaller than what is permitted or required in this zone, so that in and of itself is a condition that can't be changed and is pertinent to the lot area coverage and is a special condition of the property that weighs in favor of that particular variance. He said the property is also the last one that's kind of in a straight line, noting that the property to the left of it is angled, so the sight line issue from that house is irrelevant. He said if the Board stipulated that the porch can't be enclosed at a future date, they would really not impact the sight lines of the neighborhood, so he would be comfortable supporting the variance request on that basis. Mr. Mattson said the virtual conference he saw about setting a precedent and so on noted that the Board wasn't supposed to consider the 'what ifs' about establishing a precedent. He said the property was very undersized and it wouldn't take much to put it over the building coverage limit, and even at that, it was a modest ask. Regarding the hardship, he said it was a reasonable use. Mr. Rheaume said each case came before the Board as an individual one and that nothing the Board did specifically set a precedent, but it was important for the Board from a hardship criteria to look at what was unique about the property that set it apart from others, both in the zone and in the general area. He said in this case, the property was well aligned with others in the neighborhood. He said he was empathetic to what the applicant was asking for and agreed that there should be the condition that the porch cannot be enclosed because it would create far more of a feeling of bringing the house forward onto the street. He said, however, that it was a full-length porch and a substantial increase in the size of the property, so he still wasn't sure that the hardship criteria would be met.

DECISION OF THE BOARD

*Mr. Rossi moved to **approve** the variances as presented and advertised, with the following condition:*

- 1. The porch cannot be enclosed.*

Ms. Geffert seconded.

[Timestamp 37:20] Mr. Rossi said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance, as stated with the condition and knowing that the ordinance is trying to prevent massing too close to the street. He said he thought the open porch observes the spirit of the ordinance adequately. He said substantial justice would be done because there would be no loss to the public that would counterbalance the potential loss to the applicant for not being able to proceed with the modification to their home. He said granting the variances would

not diminish the values of surrounding properties, noting that there were letters from the neighbors who believed that the renovation would be an upgrade for the neighborhood and would bring other properties greater value by improving the overall aesthetic of the neighborhood. He said literal enforcement of the ordinance would result in unnecessary hardship because the property has special conditions that distinguish it from others in the area. He said the lot area is already noncompliant, therefore any addition to the footprint of the house is likely to go over the lot coverage percentage specified in the ordinance, and that is not a changeable condition for the property, so it is a hardship of the property. He said the other special condition was the property's location, particularly to the house to the left property line that was angled away from the applicant's property, making the potential for obstructing sight lines from that neighboring property irrelevant and non-existing. He said it was another special condition to be weighed in considering whether this is a reasonable modification to the property, and given those conditions, he believed that the use and the renovation including the condition were reasonable. Ms. Geffert concurred.

Mr. Nies said the other thing that he thought was a special condition was that the property is already nonconforming on the front setback, which limits the ability of the property owner to make any changes to the house without adversely impacting the setback even more, so he thought it was a reasonable modification. Mr. Mannle said he echoed Mr. Rossi's comments. He said the hardship was the fact that the property, along with others near it, was zoned incorrectly. He said the house was already violating it, so he thought all the requests were reasonable. Mr. Mattson noted that the hardship criteria relating to sight lines, air, light and so on, included the property next door where the structure was angled away and related specifically to the property's location on the road and the fact that the curvature of the road made the property unique from the others.

The motion passed unanimously, 7-0.

- C. The request of **Christopher Blaudschun and Katie Gilpatrick (Owners)**, for property located at **411 Ocean Road** whereas relief is needed to renovate the front façade of the existing house, including construction of new dormers, bay window skirting and a new front door portico, which requires the following: 1) Variance from Section 10.521 to allow an 11.5 foot front yard where 30 feet is required; 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 293 Lot 7 and lies within the Single Residence A (SRA) District. (LU-24-91)

SPEAKING TO THE PETITION

[Timestamp 43:24] Project architect Shannon Alther was present on behalf of the applicant and reviewed the petition. He said the house was built in 1857 and the road was probably a carriage trail at the time, so the proximity of the house to the road was unique compared with the other homes next to it. He said they wanted to add a front portico over the front door to help with water management and to allow the applicant's children to wait for the bus in inclement weather. He said

they also wanted to add articulation to the front elevation to help with water management. He reviewed the criteria and said they would be met.

[Timestamp 47:14] Mr. Rossi asked if the portico would extend farther out toward the road than the existing granite steps. Mr. Alther said it would extend about seven inches to cover the platform and that the granite step would be moved farther out into the walkway about seven inches. Mr. Rheume said the packet showed 16 feet as the distance to the front property line and asked if that was the distance to the flat façade or the current bay windows. Mr. Alther said it was the flat façade and explained it further. Mr. Rheume asked if the current front entryway steps were not any closer to 16 feet or not higher than 18 inches. Mr. Alther said they might be close to 18 inches but that he had not measured it. He said they would maintain the 7-inch step down from the first floor to the new granite stoop and that he would verify that the main landing is less than 18 inches. Mr. Rheume asked what was driving the 11.75 feet for the proposed entry stoop. Mr. Alther explained that 4.9” was the edge of the new step location, which matched the 11.75 ft setback. He said the 11.75 ft setback was from the property line to the first step, which they would slide a bit forward.

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

[Timestamp 51:08] The Board briefly further discussed the dimensions and agreed that they were fine.

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

Mr. Mannle said the lot was one of the few conforming lots on Ocean Road as far as size. He said the SRA zone had a minimum of one acre, but the applicant’s house was built prior to zoning, so no matter what the applicant did, he would have to come before the Board. He said a hardship did exist, especially for what the applicant wanted to do since his house was closer to Ocean Road than any of the surrounding ones. He said granting the variances would not be contrary to the public interest, would observe the spirit of the ordinance, and would do substantial justice because the applicant was doing his best to make his front porch safer and more accessible for his children. He said it would not diminish the values of surrounding properties. He said the hardship included the special conditions of the property being closer to Ocean Road. Mr. Rossi concurred. He said it seemed like the Board frequently had proposals come before them with antique homes. He said he believed that the antique home was placed before the road was built and was a special condition of the property. He said it was gratifying for the Board to have a proposal that preserves the antique home instead of tearing it down, noting that it always causes the Board angst when the character of the town was being altered by losing some of its antique properties. He said the location of the

home based on its historic nature was a hardship and the only way the applicant could change the front façade was to address the substantial structural issues of water damage and seepage.

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

- D.** The request of **Doty Seavey Family Revocable Trust and J W Seavey and Doty Seavy Trustees (Owners)**, for property located at **17 Whidden Street** whereas relief is needed to construct a fence 8 feet in height within the rear and side yards, which requires relief from the following: 1) Variance from Section 10.521 to a) allow a 0.5 foot rear yard where 25 feet is required; and b) to allow a 0.5 foot side yard where 10 feet is required. Said property is located on Assessor Map 109 Lot 5 and lies within the General Residence B (GRB) and Historic Districts (LU-24-85)

SPEAKING TO THE PETITION

[Timestamp 58:53] The applicant was not present.

DECISION OF THE BOARD

*Mr. Rheume moved to **postpone** the petition to the end of the agenda. Mr. Mannle seconded. The motion **passed** unanimously, 7-0.*

Note: At the end of the meeting, the applicant was still not present.

*Mr. Rheume moved to **postpone** the petition to the June 25 meeting, seconded by Mr. Mannle. The motion **passed** unanimously, 7-0.*

- E.** The request of **Lonza Biologics (Owner)**, for property located at **101 International Drive** to add four (4) above ground storage tanks which requires relief from 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. (LU-23-108)

SPEAKING TO THE PETITION

[Timestamp 1:00:20] Attorney Eric Mayer was present on behalf of the applicant, with project engineer Mike Feeny of Lonza Biologics and Neil Hansen of Tighe and Bond. Attorney Mayer reviewed the petition. He noted that the 'Iron Parcel' had been the subject of a two-phased development and that both phases were approved in 2023. He said the two structures included the Vertex Building that represented a partnership with Lonza Biologics of groundbreaking cell theory to treat Type 1 diabetes and had to be conducted in a highly-controlled environment. He said the smaller building was the utility building and there were four generator units to maintain 24-hour power. He explained that they needed a field source capable of providing the power, which was why there was a request for four 4,400-gallon aboveground storage tanks.

[Timestamp 1:05:10] Mr. Feeney reviewed the technical specifications. He explained how the tanks would be designed and why they would be their proposed size and volume of fuel. He said it would be an engineering system that would provide the least amount of risk for an environmental spill. Attorney Mayer reviewed the Pease Development Authority ordinance criteria and said they would be met [timestamp 1:09:03].

[Timestamp 1:15:14] Mr. Rheume said the applicant answered his concern about why it would make more sense to have a central tank. He said he understood the risk and that it was clear that the massive backup generators with a requirement for 4,000-lb tanks were integral to every process at Lonza. He asked if the reasoning behind the 2,000 gallon limit at the Pease Development Authority (PDA) would change in the future. Attorney Mayer said they couldn't control the regulations that the PDA enacted but thought it could be amended sometime in the future. Mr. Nies said it was unclear where the tanks were going. Mr. Feeney said the tanks would be within the structure of the generators and would be called 'belly tanks'. Mr. Mattson asked why the 2,000 gallon limit was 2,000 gallons. Attorney Mayer said he thought it had something to do with not having large scale fuel above-ground storage tanks relating to commercial uses. He said it was a provision of general applicability across all zones in the PDA, so he thought it had to do more with the run-of-the-mill commercial office spaces as opposed to large scale industrial manufacturing facilities.

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. Rheume moved that the Board recommend to the Pease Development Authority that the variance from their zoning provisions be granted for the application. Mr. Rossi seconded.

[Timestamp 1:19:06] Mr. Rheume emphasized that it was just a recommendation by the Board. He said the PDA was an interesting public/private government coalition that was created by the Pease Air Force Base being closed and redeveloped for other uses. He said granting the variance would have no adverse effect on or diminution of values of surrounding properties. He said the applicant made a good argument that this is a very large site, even by Pease standards, and the tanks are well within the confines of that. He said the tanks were a natural component of the type of management done at Pease throughout their substantial piece of property and would not look out of place. He said therefore that it was difficult to see where any diminution in the values of surrounding properties would occur. He said granting the variance would be of benefit to the public interest. He noted it was a balancing test similar to what the Board had for their regular criteria and that there was really nothing that the public would say is a negative with respect to the larger size of the tanks. He said there was perhaps some increased risk for a larger spill, but the applicant made it clear that the tanks are well engineered. He said one of the driving criteria from the risk analysis is that these are prepackaged engineered systems of a small capacity than pooling them all together in a larger tank, so there is an overall benefit to the public as part of this necessary business model for

this manufacturing company to have a 4,000-gallon tank versus a 2,000-gallon one. He said granting the variance would not result in an unnecessary hardship to the person seeking it. He said it was integral to the PDA's business model and thought a 24-hour run time was probably a realistic and logical timeframe to refuel the tanks in the absence of a commercial public source. He said it would be a hardship to stay that they were only limited to 2,000-gallon tanks. He said granting the variance would do substantial justice in favor of the company because there was really no competing interest on the part of the public or the PDA to say that this should not take place. He said the proposed use would not be contrary to the spirit of the zoning rule. He noted that it was somewhat unclear as to exactly what the genesis of the 2,000-gallon limit was and thought it was perhaps sensitivity on the part of the Air Force to not allow large tanks on the property that could result in a negative underground spill of some sort. He said there was a wildlife area in the back end of the Pease property that also needed to be protected, but the particular part of the property with the storage tanks was set far away from that and closer to highways and other types of uses. He thought the spirit of what it was trying to accomplish was probably preserved, even though the tanks were more than double what they previously were. He noted that it was also reasonable to meet one or more of the standards in Subsection C. He said the Board should recommend approval.

[Timestamp 1:23:22] Mr. Rossi said Lonza as a company is an established corporate resident in the PDA and has a track record of responsible stewardship of their facility and its safe management. He said they're a large firm with sophisticated engineering and safety resources available to them, and he therefore thought that any risk to the public in recommending approval for the oversized (by the ordinance) tanks is very minimal. Mr. Nies said he would support the motion but wanted to make a pedantic point of what the PDA actually sent the Board. He said on page 82 there was a motion that said they will approve the tanks 'assuming that Lonza secures the requisite variance from the City of Portsmouth'. He said the Board does not grant them a variance and suggested that the Planning Staff remind the PDA Staff that the Board only gives a recommendation. Chair Eldridge said it was written more clearly in the past and thought it was unusual.

The motion passed unanimously, 7-0.

III. OTHER BUSINESS

There was no other business discussed.

IV. ADJOURNMENT

The meeting adjourned at 8:30 p.m.

Respectfully submitted,

Joann Breault
BOA Recording Secretary