

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

**7:00 P.M.**

**April 22, 2025**

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

**MEMBERS EXCUSED:** None.

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

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Chair Eldridge called the meeting to order at 7:00 p.m.

**I. OLD BUSINESS**

**A. 84 Pleasant Street – Second Rehearing Request**

Chair Eldridge read the Working Stiff Properties request into the record.

[Recording timestamp 6:26] Mr. Rheame said the applicant cited some applicable State law that indicated that he felt that if they brought these issues forward, they would need to appeal it to the Board first and if denied, they would then present the issues in an appeal to the court system. He said he felt that some things were probably true but was not sure that they were errors made by the Board. He said it stated that the Board deliberated and opinions were brought up contrary to the final decision of the Board, which was to grant the singular variance that was the subject of that rehearing. He said there was great debate amongst the Board that ended up in being in favor of granting the variance. He said the appellant also brought up the size of the Board and the fact that it had seven members instead of five, which was common for the rest of New Hampshire. He said the 1953 State Statute allowed the Board to have seven members and he did not see that it was a concern for the application. He said the Board gave the opportunity for a rehearing and concluded that if the appellant continued to feel that the Board did not come to the right conclusion, that was their prerogative, but he did not see why the Board needed to consider it again. Vice-Chair Margeson said she did not agree with the Board's original decision but would vote to rehear it. She agreed that the composition of the Board pursuant to State Statute was not something within the Board's purview. Mr. Nies said he thought the discussion was thorough and that he did not see anything that would compel him to revisit those arguments. He noted that the City had been operating this way for 72 years, and he was not convinced that it warranted a rehearing.

*Mr. Nies moved to **deny** the request for a second rehearing, seconded by Mr. Rheume.*

Mr. Nies said he did not find anything that warrants a rehearing of what he felt was a very thorough discussion and did not see anything that would change the Board's decision or warrant coming back for another rehearing. Mr. Rheume concurred and had nothing to add.

*The motion to deny **passed** by a vote of 5-1, with Vice-Chair Margeson voting against and Mr. Rossi abstaining.*

## II. NEW BUSINESS

- A. The request of **William J. Armstrong JR Revocable Trust (Owners)** for property located at **70 Stark Street** whereas relief is needed to construct a detached accessory workshop structure which requires the following: 1) Variance from Section 10.573.20 to permit a 10-foot rear yard where 20 feet is required. Said property is located on Assessor Map 159 Lot 50 and lies within the General Residence A (GRA) District. (LU-25-37)

### SPEAKING TO THE PETITION

[Recording timestamp 13:13] Attorney Chris Mulligan was present on behalf of the applicant, along with the owners, the Armstrongs, and project designer Chris Redman. Attorney Mulligan said the lot was a large corner one and almost twice the minimum lot size for the zone. He said a significant addition was added 15 years before, so there was a second dwelling on the property. He said they proposed to build an accessory workshop in the rear southwest corner of the property but would still be within the building coverage and open space requirements. He said the setbacks posed a challenge because there were two front setbacks on a corner lot, so the owners wanted to site it in the deepest part of the lot but within the 20-ft rear setback. He said the workshop would have a second floor for storage space and that there was a similarly-sized accessory structure next door.

[Timestamp 16:55] Mr. Nies asked if a variance was really needed. He said the recently-revised ordinance indicated that any lot with one or two dwelling units is permitted to construct and maintain a one-story detached accessory structure used as a tool or storage shed and shall be generally exempt from all provisions of this ordinance. Attorney Mulligan said they proposed a structure with more than a single story and greater than 120 square feet. Vice-Chair Margeson asked which rear yard the relief was for. Attorney Mulligan said it was for the one off Stark Street. Mr. Rheume said the packet indicated an unfinished space that the client would finish and asked what the client's plan was to finish that space. Attorney Mulligan said it was just a reference to the client to install sheet rock and the rest of the finish work himself to save costs. He reviewed the criteria.

Mr. Rheume said the MapGeo illustration showed the client's lot and that it looked like it would be just the primary residence. He asked if the current garage was there. Attorney Mulligan said the Staff Report's aerial map showed the addition. Vice-Chair Margeson asked why it had a garage door. Attorney Mulligan said it was not uncommon for a workshop to have the need for access for

large pieces of machinery, plywood, and so on. The owner William Armstrong said the garage door was more like a barn door. Mr. Rheume said the plan indicated that the second story would be finished, and he asked what the intent for the space listed as storage was. Mr. Armstrong said he and his wife had a lot of items to store.

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**

*Vice-Chair Margeson moved to **grant** the variance for the petition as presented and advertised, seconded by Mr. Mannle.*

[Timestamp 28:50] Vice-Chair Margeson referred to Sections 10.233.21 and .22 and said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. She said the reason for the side yard and front yard building envelope setbacks was to ensure the movement of light and air through the structures and would add distance between the structures. She said it would not alter the essential character of the neighborhood and would not threaten the health, safety and welfare of the public. She said the applicant submitted examples of other lots in the area that also had accessory structures. Referring to Section 10.233.23, she said granting the variance would do substantial justice because she did not see that the public, through the substantial justice prong, would incur any kind of loss as a result of the variance being granted, whereas the impact on the applicant would be substantial. Referring to Section 10.233.24, she said granting the variance would not diminish the values of surrounding properties. She said the Board did not have an expert's opinion on whether the values would be diminished, but it was common sense and it was also an accessory barn structure, so it would not impact any surrounding properties negatively. She referred to Section 10.233.35, which indicated that literal enforcement of the provisions of the ordinance would result in an unnecessary hardship and to determine if the property has special conditions that distinguish 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 and the specific application of that provision to the property, and the proposed use is a reasonable one. She said the property did have special conditions because it was a large lot for the area and was irregularly shaped, had two front yards, and the existing structures on the lot made it difficult to site the accessory structure. She said due to those special conditions, a fair and substantial relationship did not exist between the general public purposes of the ordinance and the specific application to the property. She said the proposed use is a reasonable one because the workshop structure is allowed as an accessory use, and she recommended approval.

[Timestamp 32:37] Mr. Mannle concurred and said he wanted to add a condition that only electric utilities could be connected to the barn and not plumbing or gas. He said he did not want the

structure turned into a living unit without the applicant returning for approval. Vice-Chair Margeson said Mr. Mannle was thinking of an Accessory Dwelling Unit (ADU). Mr. Mannle said if it were approved, the unit could not be a living unit without plumbing or gas. Vice-Chair Margeson said she was reluctant to accept the condition because if the structure were allowed, the Board would be taking away something that was allowed by right. Mr. Mannle said the applicant could return for permission to get plumbing or gas. Vice-Chair Margeson said she would not accept the condition because with a Conditional Use Permit, the structure could become an ADU.

*Mr. Mannle **withdrew** his second.*

[Timestamp 35:10] **Mr. Rheume seconded.** He said the property already had a lot of structure on it, but he thought it was important that it was still within the allowable building coverage and was 10 feet off the rear property line. He said it mimicked the side yard requirement and tried to create a symmetry with the property line and was also parallel to an outbuilding on the neighboring property, so the structure would not diminish the neighbor's enjoyment of an open space. He said the petition met all the criteria and that the variance should be granted. Mr. Rossi said he would not support the motion. He said the special conditions of the property being oversized and trapezoidal in nature mitigated against the variance, not for it. He said the larger lot really called into question why there would be encroachment on the setbacks at all, particularly on the side of the lot that was the deepest relative to the Stark Street frontage. He said it was a green field design where the applicant decided that it needed to be 28 feet deep and that it should not be any closer to the existing garage. He said those were the applicant's design decisions and that he did not think they were driven by the special nature or special characteristics of the lot itself. Mr. Rheume said it was a good point but explained how the placement of the structure made logical sense for the parcel.

*The motion **passed** by a vote of 5-2, with Mr. Mannle and Mr. Rossi voting against.*

- B.** The request of **Paul and Karolina Roggenbuck (Owners)** for property located at **2 Sylvester Street** whereas relief is needed to construct a second dwelling and associated driveway on the lot which requires the following: 1) Variance from Section 10.513 to allow more than one free-standing dwelling on a lot; 2) Variance from Section 10.1114.31 to allow a second driveway on the lot; and 3) Variance from Section 10.521 to allow a lot area per dwelling unit of 7,899 s.f. where 15,000 s.f. is required. Said property is located on Assessor Map 232 Lot 35 and lies within the Single Residence B (SRB) District. (LU-25-34)

## **SPEAKING TO THE PETITION**

[Timestamp 40:39] The applicant/owner Karolina Roggenbuck was present and reviewed the petition. She said the dwelling would be located on the southeast side of the property with a footprint of about 1,252 square feet and would have two bedrooms and a bathroom above a 3-car garage. She said the dwelling would be used as a rental property for income to offset her husband's medical costs. She reviewed the criteria in detail and said they would be met.

[Timestamp 55:24] Mr. Rheume said there was a request ten years ago to subdivide the lot into two lots and the Board denied it. He asked what the difference was between that and what the applicant proposed. Ms. Roggenbuck said they wanted the second dwelling instead of an ADU and that they were not asking to subdivide the lot. Mr. Rheume said they were asking for a gross living area of 1,002 square feet but they could build the structure without a variance if they kept the ADU to 750 square feet. He said it would require a Conditional Use Permit from the Planning Board but that it was a lesser bar to cross. He asked why the additional 252 square feet was so important to the applicant. Ms. Roggenbuck said they wanted a comfortable living space. Mr. Rheume said the applicant indicated that building the structure would improve the acoustics, and he asked if it was based on anything scientific. Ms. Roggenbuck said she heard echoing in the yard. She said there was no technical basis other than she believed that the structure would lessen the sound.

[Timestamp 59:55] Mr. Rossi confirmed that the existing driveway was 30-1/2 feet wide and the proposed one was 40 feet wide. He asked how much space would be between the two driveways. Ms. Roggenbuck said it would be about 13 feet between the driveways if she narrowed the new one and made it 10 feet less. Vice-Chair Margeson said the criteria for the SRB zone was 15,000 square feet and the applicant's was just over that, and with the two dwellings on it, it reduced it to 7,899 square feet, which brought it into the GRA lot area allowed, but she said the GRA was not allowed to have more than one dwelling unit per lot to regulate density. She asked what it was about the size of the lot that said the provisions of the zoning ordinance did not apply to the lot. Ms. Roggenbuck said that based on the size of structure they wanted to build, the left side of the property was unusable because of the two front yards. She said in the other area, they had a 30-ft setback and a 10-ft setback, so it was a small area to build something in. Vice-Chair Margeson said the applicant wanted two dwelling units on the lot, which would reduce the lot area. She said it was a property that complied with zoning already and that the project would take it out of compliance. Ms. Roggenbuck said she thought the only way to be in compliance was to make a much smaller building. Mr. Rossi asked Ms. Harris if it was accurate that the surrounding lots had only one unit, noting that there seemed to be some outbuildings. Ms. Harris said the property next door and the one across the street had a detached ADU. Vice-Chair Margeson said detached ADUs were allowed but the size and height of the applicant's second dwelling unit was too big. Mr. Rossi asked what the primary structure's square footage was. Ms. Roggenbuck said it was 1,340 square feet.

Chair Eldridge opened the public hearing.

### **SPEAKING AGAINST THE PETITION**

[Timestamp 1:07:05] Taylor Andrews of 1 Sylvester Street said the project would negatively impact her property and potentially other properties due to water flow and displacement. She said doubling the pavement would change the neighborhood's character. She said a garage with a home above it overlooking her home would diminish her property's value.

Chair Eldridge noted that the Board also received a letter in opposition. No one else spoke, and Chair Eldridge closed the public hearing.

## DISCUSSION OF THE BOARD

[Timestamp 1:12:04] Mr. Rheaume said the application came down to 252 square feet and met all the requirements, but the biggest issue was that the applicant wanted to build a livable footprint of 1,002 square feet, where the ordinance allowed a max of 750 square feet for a detached ADU. He said the applicant could build an ADU that met the requirements. He said the Conditional Use Permit process had a much lower threshold to meet for approval. He said the applicant did not sufficiently demonstrate that the criteria for a variance were met, particularly for hardship. He said the buildings were two separate ones and were not allowed except for an attached ADU. He said he could not support the request. Mr. Mattson said he could see it going either way because the logic for ending up with two structures on the small lot would be similar to the density of Marjorie Street. Mr. Nies said he struggled with the September 2014 issue raised at the City Council that the lots were voluntarily or involuntarily merged because the record was not clear. He said at one time there were probably three lots that got voluntarily merged and the Board denied the variance. He said the application was essentially the same thing, putting two residences on a lot where they would not meet the zoning requirement. Mr. Rossi said the Board was taking a lot and a structure that conformed dimensionally and making it a non-conforming lot, which they really didn't need to do. He said the Board also saw a lot of pressure to put multiple dwelling structures on a single lot in residential-zoned areas, and they generally turned those variances down. He said he would not support the variance request, especially since there was another option for an ADU.

*Mr. Rossi moved to **deny** the variances for the petition as presented and advertised, seconded by Vice-Chair Margeson.*

[Timestamp 1:28:46] Mr. Rossi said the application only needed to fail one of the variance criteria to fail, and it failed the hardship criterion. He said for the petition to meet that criterion, there would have to be something unique about the nature of the lot that would militate that it was the only way to proceed. He said there was no mitigating characteristic of the lot that said the structure had to be located at this place and size to achieve the goals of reasonable use of the property and that the applicant could have an ADU within the context of the existing ordinance for ADUs. He said there was no special characteristic of the property that said it could not be used in a reasonable and conforming manner. Vice-Chair Margeson said the zoning ordinance was clear about having only one lot per dwelling unit in the SRA and SRB zones, GRA and GRB zones, and rural districts. She said the only way the Board could deviate from it was if the property had special conditions. She said to regulate density, the Board had to have one dwelling unit per lot. She said the lot perfectly conformed to the zoning ordinance and that the applicant did not demonstrate hardship. Mr. Nies said he did not think the request was consistent with the spirit of the ordinance because the ordinance was designed for 1-3 residences per acre, and the applicant's petition was for somewhere around five residences. He said there were other properties around on smaller lots that did not comply either, but the ordinance said those were not supposed to be used to justify the spirit of the ordinance. Mr. Rheaume said Portsmouth needed additional housing and the relief for that was an ADU. Mr. Mattson said he would support the ADU as a feasible option due to the need for affordable housing but thought his fellow Board members had rational points.

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

- C. The request of **Colbea Enterprises LLC (Owners)** for property located at **1980 Woodbury Avenue** whereas relief is needed to demolish and redevelop an existing gas station and convenience store which requires the following: 1) Special Exception from Section 10.440, Use #8.122 to allow a Convenience Goods 2 use with 24 hours per day operation; 2) Variance from Section 10.5B33.20 to allow for a front lot line build out of 0% where a minimum of 75% is required for a commercial building; 3) Variance from Section 10.5B34.60 to allow for a front setback from the lot line of 27 feet on Woodbury Avenue and 46 feet on Gosling Road where a maximum of 20 feet is required; 4) Variance from Section 10.5B83.10 to allow for parking spaces to be located between the principal building and the street; 5) Variance from Section 10.835.32 to allow for drive-through lanes, bypass lanes and stacking lanes to be located within 13 feet of the property line where 30 feet is required; 6) Variance from Section 10.835.31 to allow outdoor service facilities to be located within 38 feet of a lot line where 50 feet is required. 7) Variance from Section 10.843.33 to allow for pump islands to be located within 28 feet of the lot lines where 40 feet is required; 8) Variance from Section 10.1251.10 to allow for an aggregate sign area of 454 s.f. where a maximum of 223.5 s.f. is allowed; 9) Variance from Section 10.1251.20 to allow a 134 s.f. freestanding sign where a maximum of 100 s.f. is allowed; 10) Variance from Section 10.1253.10 to allow for a freestanding sign at a) a height of 26.5 feet where a maximum of 20 feet is allowed and b) two freestanding signs at a setback of 3 feet where 10 feet is required; and 11) Variance from Section 1252.40 to allow illumination of a gas pump canopy area that shall not be included in the sign area where it is distinguished from the background only by color stripes. Said property is located on Assessor Map 239 Lot 11 and lies within the Gateway Corridor (G1) District. (LU-25-39)

## **SPEAKING TO THE PETITION**

[Timestamp 1:36:40] Attorney Christopher Drescher was present on behalf of the applicant. He stated that Variance No. 11 for the illumination of the gas pump canopy was not needed and was removed. He asked for additional time for his presentation.

*Mr. Rheume moved to allow the applicant an additional ten minutes, seconded by Mr. Nies. The motion **passed** unanimously, 7-0.*

Attorney Drescher introduced the project engineers Chris Rice and Jason Cook and the Colbea Enterprises, LLC in-house counsel Attorney Jay Hall. He reviewed the petition, noting that the owner wanted to buy the property and build his own convenience store instead of the one that he leased. He said the current gas station had eight fueling islands and eight pumps, and his client wanted to reduce the number of islands to four and the pumps to four. He reviewed the special criteria exception. He reviewed the variance criteria and said the hardships were the small property on a corner lot and the non-conforming use. He said the project would reduce the fueling operation by 50 percent and that there was adequate screening along the edge of the property.

[Timestamp 2:02:47] Mr. Rheume said the difference between the current use of Convenience Goods 1 vs. Goods 2 was that the food was made on site, so the applicant's argument was that the current use is a Convenience Goods 2 store. He asked what the current use by the client's lessee was in terms of meeting that and how the proposal was different from that. Attorney Hall, Council for Colbea, said there was a limited food offering in the gas station now and that they would be handling more fresh food. In terms of the similarities of use, he said theirs would be geared more toward fresh food. He said currently food was not prepared on site. Mr. Rheume said Attorney Hall was implying that they were probably more like a Convenience Store 1 currently. Attorney Hall said technically the owner's site was a '2' because they had hot dogs and so on, and his proposal would be for fresh sandwiches made on site, which was more in line with a convenience store. Mr. Rheume asked if the drive-thru portion was tied to the ability to provide food made on the premises for people coming through. Attorney Hall agreed and said the gas station portion was 24 hours but that they would have their own brand of café that would not operate 24 hours a day. Mr. Rheume asked if the applicant had a timeframe that they would be amenable to if the Board offered a condition. Attorney Hall agreed and said it could be 5 a.m. to 10 p.m. Mr. Rheume said the applicant's argument was that there was a Dunkin Donuts a few doors down that had a drive-thru, so they also wanted one, and that the area was all commercial with one residential. Mr. Rheume said the residential was important. He asked if a more detailed analysis was done or could be provided regarding the impact that idling cars, people having conversations, and the radio playing would have to the residential, particularly because the building would be moved closer to the property line. Attorney Hall said they studied sound decibels in other locations and had the ability to ensure that the volume from the machine would not resonate off the property line. He said the pumps and the cars coming through to fuel were closest to the property line, but his experience was that the use of the drive-thru or idling through was quieter than the use of the pumps. Mr. Rheume said the applicant was proposing to put a copy of what had been done elsewhere and put it into Portsmouth's ordinance whether it fit or not. He said the Gateway District had been set up deliberately for parking in the back and that the current existing uses did not fully comply with the ordinance, and the applicant's property would be the first thing someone coming down from Woodbury Avenue would see. He said his impression was that the applicant took their cookie cutter design and put it onto the lot. He asked if there was anything the applicant could demonstrate to say that they looked at the zoning and that they modified their standard model to better reflect what the City was trying to accomplish with that important lot. Attorney Hall said they worked with the Planning Department to come up with something that fit on the lot and that they moved the pumps to the front to have traffic circulating the site. He said the plan had a similar look to their other gas stations but that they were all very different. He said the lot was a challenge and that they did not do a cookie cutter design but they needed the variances to make it work. Mr. Rheume said the applicant stated that the proposed sign was their standard sign. Mr. Rheume said he believed that the current station had managed to be in service for many years with compliant signage. He asked why relief was needed for the signage. Attorney Hall said each of their signage packages were designed to consider the size of the building, the setback, and the lot. He said the store was a medium-sized one and the sign was also a medium-sized one. He said they did not oversize signage on their buildings but that customers had to see the sign and the price from a distance.



[Timestamp 2:16:34] Mr. Rossi referred to the objectives for the Gateway neighborhoods, noting that one of them was to encourage walkable mixed use development. He asked what specific design feature enhanced the walkability of the area. Attorney Hall said it was not very walkable. Mr. Rossi asked if the objective of a design feature that addressed the desire to create quality places while allowing for wholesale development with meaningful public and neighborhood centers was incorporated in the applicant's design. Attorney Hall said they added the fresh food service and the ability to gather in a small area within the store and that was accessible through the walkways. He said they would tie into the side of Woodbury Avenue to have a sidewalk.

[Timestamp 2:19:10] Vice-Chair Margeson said it was a significant expansion of the lot and what was currently there was a Mobil station with a little snack shack. She said the most problematic aspect was the drive-thru, and she asked if it could be eliminated. Attorney Drescher said the building was 1,000 square feet less than any of their other stores and that they were reducing the fueling stations. He said there was buffering and a significant distance between the building on the other side of the fence. Vice-Chair Margeson said she did not see the analogy of pumping gas with going through the drive-thru. She said people used those bays less frequently than the other bays, and when they pumped gas, they turned off their cars, so there were no noises and people got through quickly. She said there was a significant residential neighborhood in back and there was a lot going on at the site. Attorney Hall said the drive-through tended to not bring any additional traffic onto the site. He said if someone wanted something from the fresh food offering, they tended to get it through the drive-thru and then left the site. He said most of the people who used the drive-thru were not getting gas. Vice-Chair Margeson asked why people couldn't just go into the store to order food so that the drive-thru could be eliminated.

[Timestamp 2:23:43] Mr. Nies confirmed that the applicant wanted a doubling of the aggregate sign area, according to their memo, but he said the applicant specifically stated in the packet that it was a minor increase in the aggregate sign. He asked how high the existing Mobil signs were. Attorney Drescher said they were 20 feet tall. Mr. Mattson asked why the applicant said the lot was four times bigger than the minimal lot size and was similar to the adjacent lot on Woodbury Avenue. Attorney Drescher said it was small in relation to the requirement of the ordinance. He said what existed now violated several things and the pumps went right up against the neighbor's lot.

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 2:27:39]

*Mr. Rossi moved to **grant the special exception** as presented and advertised, seconded by Mr. Mattson.*

Mr. Rossi said the special exception pertains to the use of the building for Convenience Store 2, so he was evaluating that without regard to the specifics of the drive-thru, which required a variance. He said his comments did not contemplate the presence or absence of the drive-thru component. He said the use was permitted by special exception and that granting the special exception would pose no hazard to the public or adjacent properties on account of potential fire, explosion, or release of toxic materials. He said it is a convenience store and the risk of such things was *de minimis*. He said it would pose no detriment to surrounding property values, noting that the applicant made the point that it was a commercial use in a heavily commercialized area. He said nothing about the building and its use as a convenience store would negatively affect the surrounding properties. He said it would pose no traffic or safety hazards because the ingress and egress into and out of the lot were very good and traffic came from two major roadways, so he did not anticipate that the volume of traffic would be significantly different than what was currently being experienced on the site. He said there would be no excessive demand on municipal services because there was nothing about running a convenience store that would place such demands upon municipal services. He said there would be no increase in stormwater runoff onto adjacent properties, noting that the property was currently an impermeable surface. Mr. Mattson concurred and had nothing to add.

[Timestamp 2:30:16] Mr. Rheume said he still had concerns because due to the overall use with the drive-thru and the nature of the place, he would still like to see the special exception have a condition associated with it regarding it not being a 24-hour a day function. He said the variance could be separated from the application also. Mr. Rossi said his problem with a condition like that was that it had imbedded into it the tacit assumption that the drive-thru will be part of the operations, and without a variance, there would be no reason to make that assumption. He said he would not support that variance and thought they were separate issues. He said if the building were relocated and provided sufficient lot line clearance, then the Board might be able to consider something like that. He said he was satisfied that the motion did not commit the Board to allow the drive-thru operation. Chair Eldridge agreed.

*The motion for the special exception **passed** by a vote of 6-1, with Mr. Rheume voting against.*

[Timestamp 2:34:12] Mr. Rossi noted the sheer volume of the variance requests and thought the design was in flagrant disregard of Portsmouth's zoning objective and was shoehorned into a spot where it was an overly intense use of the land that did not comport with what the City was trying to accomplish. He said he was concerned about Variance Numbers 4 and 5 that pertained to the drive-thru operations and thought it was not a good assumption that the sign board and its use, the traffic, and the volume of communications in the sign board and so on would be okay. He said the Board had no way of judging that it would not be creating a disturbance to the residents in the adjacent property. He said the proposed design had the one thing that was the most egregious to residents right next to the residential use, so the orientation of it made it impossible for him to support Variances 4 and 5. He said he was also concerned about the signs because they were big and tall and would be the first thing people entering Portsmouth would see. He said that was not the image that the City wanted to project and was not consistent with what was trying to be achieved with the signing aspects of the ordinance. He said he would not support Variances 7, 8 and 9. He said it was

not clear to him how much of the lot line variances was driven by the desire to have the traffic wrapping around the back of the building but that he would go along with them because there were two frontages and it was a logical way to configure a gas station and convenience store, and similar variance requests were approved on Lafayette Road recently.

Chair Eldridge asked if the drive-thru should be considered as a separate variance, as well as Variances 4 and 5 and the sign variances.

[Timestamp 2:37:51] Mr. Rheume said the proposal had a lot of interlocking parts and asked for a lot of relief and that it could be cut down substantially. He said a lot of effort was put into creating the Gateway District. He said the gas station application may need some level of relief, but it may not be practical for all the things needed for a gas station. He said he'd like to see the application flushed out more and suggested that the variances be postponed to give the applicant a chance to make a more persuasive case as to how they would try to incorporate what the Board was looking for and also do something with their signage. Mr. Nies said he had the same concerns as Mr. Rossi but thought the Board should be clear on whether they were asking for a better rationale or a new proposal. Mr. Rheume said his concerns centered around the drive-thru and the impact on the close neighborhood with a large apartment building. He said they didn't need to duplicate the Dunkin Donuts by putting another imposition on that neighborhood. He said he had concerns about the signage and wondered if the applicant really needed that relief. He said the Board had to balance the reasons why the applicant said their configuration made the most sense between what the ordinance was trying to accomplish. He said the applicant was asking for exactly what they wanted and the goals for the Gateway District were getting very little. Vice-Chair Margeson said she would be in favor of continuing because she wanted more information on the relation of the project to the Gateway. She said the spirit and intent of the ordinance were missing and that the most problematic aspect was the drive-thru. Mr. Mannle said he did not think it was possible to build a gas station in the Gateway District without variances. He said he liked the proposal because it improved the property, but there were too many variances requested due to the Gateway District on top of it. It was further discussed. Mr. Rossi suggested that the Board stick to their process to give the applicant a fair chance to return with something that would not get tripped up by Fisher v. Dover. Mr. Rheume explained why he agreed. It was further discussed.

[Timestamp 2:53:20]

*Mr. Rheume moved to **postpone** consideration of the application until the May 16 meeting, with the expectation that the applicant address significant concerns of the Board related to the variances associated with the drive-thru and either eliminate it or provide substantial justification as to why it would not impact the adjacent residential property; what could be done to mitigate the signage variances by either eliminating them or describing why they were critical to the property's operation of the gas stations use; and for the remaining variances, either eliminate them or provide a better explanation of why the objectives of the Gateway District could not be fully met if it remained as a gas station and Convenience Store 2 use.*

*Vice-Chair Margeson seconded. The motion **passed** by a vote of 6-1, with Mr. Rossi voting against.*

- D.** The request of **Lonza Biologics (Owners)** for property located at **101 International Drive** whereas relief is needed to construct a canopy with supporting structure which requires relief from the following: 1) Variance from Section 304.04(c) of the Pease Development Ordinance to allow a canopy and supporting structures for an outdoor patio to be located within 70-feet of the front property line. Said property is located on Assessor Map 305 Lot 6 and lies within the Airport Business Commercial (ABC) District. (LU-25-47)

## **SPEAKING TO THE PETITION**

[Timestamp 2:58:18] Attorney Chris Hillson was present on behalf of Lonza Biologics, along with the Lonza architect Kristopher Tiernan. Attorney Hillson said the PDA has already approved much of what Lonza wanted to do and that he was there to request a recommendation of approval for three poles that would be within the 70-ft setback. He said the lot was a large one of 46 acres and was dominated by Lonza's industrial facility that had no windows, so they wanted to put an outside patio with sun shades on the westerly side for the 1500 employees. He said there was no definition of structure in PDA's land development ordinance and that the three poles were deemed to be a structure. He reviewed the criteria.

[Timestamp 3:07:05] Vice-Chair Margeson asked if the area would only be available to Lonza employees, and Attorney Hillson agreed. Mr. Rheume asked what the triangles depicted between the poles were. Attorney Hillson said they were sun shade canopies and that only the poles were considered as part of the structure by the PDA. Vice-Chair Margeson asked if three of the poles were within the setback. Attorney Hillson said the closest pole was 45'4" from the setback. Mr. Rheume asked how many total poles were part of the structure. Attorney Hillson said there were six poles, and the back three were outside the setback. Mr. Rossi asked what consideration was given to emergency vehicle access or ingress/egress from the area. Attorney Hillson said there were two points of ingress for emergency vehicles on the westerly façade of the building that wrapped around to the north and south. He said the exhibit did not depict Goosebay Drive along the back side of the structure, so the structure was ringed by an accessway for emergency service personnel. Mr. Tiernan said the patio was designed for emergency vehicles to go over it, and the furniture was removable. He said they had the Fire Department's approval and that the Fire Department wanted to maintain a 200-ft road width, which the poles would maintain.

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 3:12:38]

*Mr. Nies moved to **recommend approval** of the variance to the PDA as presented and advertised, seconded by Mr. Mannle.*

Mr. Nies said no adverse effect or diminution of the values of surrounding properties would be suffered, noting that it was difficult to see how three poles would have any impact on the value of any of the properties. He said granting the variance would be a benefit to the public interest by allowing the sun shades to create a more attractive view of Lonza Biologics and that it would also make the use of the patio better for the employees. He said denying the variance would result in an unnecessary hardship and that he did not see the point of people sitting at tables getting baked in the sunshine. He said the sun shades would create a shadow for them, which would definitely be a benefit and that it would be a hardship without them. He said substantial justice would be done, noting that it would be difficult to see how there would be any benefit to the public by disapproving this, and it would be a loss to the applicant by doing so. He said the proposed use would not be contrary to the spirit of the zoning rule and that the setbacks on Pease were for the same reason as for other places, which was to promote light and air and prevent overdensity. He said the three poles would not have any impact on light and air or affect the density in any significant way. He said the Board should recommend approval. Mr. Mannle concurred and had nothing to add.

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

*At this point in the meeting, Mr. Nies moved to **extend** the meeting past 10:00, seconded by Mr. Rossi. The motion **passed** unanimously, 7-0.*

- E. The request of **Adam and Reagan Ruedig (Owners)** for property located at **70 Highland Street** whereas relief is needed to demolish the existing garage and bulkhead and to construct a new detached garage and bulkhead which requires the following: 1) Variance from Section 10.521 to allow a) building coverage at 26% where a maximum of 25% is allowed; b) a 2 foot rear yard where 18 feet is required; c) a 2 foot right side yard setback where 10 feet is required; and 2) 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 located on Assessor Map 134 Lot 27 and lies within the General Residence A (GRA) District. (LU-25-40)

## **SPEAKING TO THE PETITION**

[Timestamp 3:16:48] Attorney Derek Durbin was present on behalf of the applicant and reviewed the petition. He said the proposal was to demolish the existing garage and build a new one in a slightly larger footprint. He said the existing garage was not big enough for two modern vehicles and was also rotted. He said its expansion would go not go any farther into the setbacks and would come toward the property instead. He said they also proposed a bulkhead to the rear of the house for better access and to replace the existing one that was too small and was in poor shape. He noted that the Board had letters of support from two abutters. He said the asphalt driveway would also be replaced with a pervious one that would constitute an overall reduction in impervious surface. He reviewed the criteria and said they would be met.

[Timestamp 3:25:06] Mr. Mattson asked if the request for the bulkhead contributed at all to the variances or whether it was just building coverage. Attorney Durbin said it contributed to the .7

increase and was 19 square feet over with the coverage. He said the bulkhead would be increased in size by 22 square feet. Mr. Rheume asked about the hoist crane beam that ran the length of the second floor and what would take place up there. Mr. Ruedig said that was for when he was no longer able to carry heavy things into the garage's attic. He said the expected capacity of it was 500 pounds and that it would be to store bikes, skis, and other equipment.

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 variances for the petition as presented and advertised, seconded by Mr. Nies.*

Mr. Rossi said there would be no change in the lot line conformance or lack of conformance because it would still be a 2-ft setback on the back and side yards. He said in terms of the lot area coverage, it was 25.7 percent instead of 25 percent and was *de minimis*. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said the project would not encroach on air flow and light or sunshine on surrounding properties because the new garage would replace a similar structure, so there would be no change in conformance. He said substantial justice would be done because there would be no loss to anyone in the neighborhood by replacing the current garage with a new one. He said the changes in dimension were reasonable. He said granting the variances would not diminish the values of surrounding properties because a new garage was good for the neighborhood, and the proposed one was tastefully designed to fit in with the characteristics of the neighborhood. He noted that it would not have an upward extension that would create long shadows. He said literal enforcement of the ordinance would result in unnecessary hardship because, regarding the setback encroachments, the garage could not be moved away from either the right or back property line without bumping into the house, so it was a logical location and was near the driveway. He said that and the existing structure were special conditions of the property. Mr. Nies concurred and had nothing to add.

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

- F. WITHDRAWN** The request of **Jeannette MacDonald (Owner)** for property located at **86 Farm Lane** whereas relief is needed to subdivide the existing property into 3 separate lots. The proposed parent lot requires the following: 1) Variance from Section 10.521 to allow a) 28-foot rear yard setback where 30 feet is required; and b) 23-foot secondary front yard where 30 feet is required. Proposed lots 1 and 2 require the following: 2) Variance from Section 10.521 to allow a) 13,125 s.f. of lot area where 15,000 s.f. is required; b) 13,125 s.f. of lot area per dwelling unit where 15,000 s.f. is required; and c) 75 feet of continuous street

frontage where 100 feet is required. Said property is located on Assessor Map 236 Lot 74 and lies within the Single Residence B (SRB) District. (LU-25-41) **WITHDRAWN**

The petition was **withdrawn** from the applicant.

### **III. ADJOURNMENT**

The meeting adjourned at 10:29 p.m.

Submitted,

Joann Breault  
BOA Meeting Minutes Taker