

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

**7:00 P.M.**

**July 15, 2025**

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

**MEMBERS EXCUSED:** None.

**ALSO PRESENT:** Stefanie Casella, Planning Department

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

*Mr. Rossi moved to take Item II.C, Request for Withdrawal of the 636 Lincoln Ave petition, out of order. Mr. Mannle seconded. The motion **passed** unanimously, 6-0, with Mr. Nies recused.*

*Mr. Mannle moved to **suspend** the rules, seconded by Mr. Rheame. There was no discussion. The motion **passed** unanimously, 6-0, with Mr. Nies recused.*

*Mr. Mannle moved to **grant** the request for withdrawal of Item II.C, 636 Lincoln Ave, seconded by Mr. Rheame. The motion **passed** unanimously, 6-0, with Mr. Nies recused.*

## **I. APPROVAL OF MINUTES**

A. Approval of the **June 17, 2025** meeting minutes.

*Vice-Chair Margeson moved to **approve** the June 17 minutes as presented, seconded by Mr. Nies. The motion **passed** unanimously, 6-0, with Mr. Rossi abstaining.*

## **II. OLD BUSINESS**

A. The request of **Harborside Property Management LLC (Owner)**, for property located at **92 Brewster Street** whereas relief is needed to demolish the existing structure and construct a single-family home with Accessory Dwelling Unit which requires the following: 1) Variance from Section 10.521 to allow a) 2,884 s.f. of lot area where 3,500 s.f. are required, b) 2,884 s.f of lot area per dwelling unit where 3,500 s.f. are required, c) 52.33 feet of continuous street frontage where 70 feet are required, d) 9.5 foot right side yard where 10 feet are required, and e) 10 foot rear yard where 20 feet are required. Said

property is located on Assessor Map 138 Lot 54 and lies within the General Residence C (GRC) District. (LU-25-25)

Mr. Rheume recused himself from the petition.

### **SPEAKING TO THE PETITION**

[Timestamp 6:43] Attorney Monica Kaiser was present on behalf of the applicant, along with the owner and project team. She reviewed the petition and said the applicant proposed a single-family home with an ADU that would comply with the side and front setbacks but would need relief on the rear setback. She said there was some feedback from a neighbor about the 3-story nature of the structure and the roofline's pitch, but the nearby newer homes were similar to the proposed design.

[Timestamp 13:54] Vice-Chair Margeson confirmed that there would be a basement and that the ADU would be on the ground floor and the second and third floors would be living space. Mr. Mannle confirmed that George Hales was the property owner and not just the manager of Harborside Property. Attorney Kaiser then reviewed the criteria.

[Timestamp 19:43] Vice-Chair Margeson asked if the existing structure was occupied. Attorney Kaiser agreed.

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 20:40]

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

Mr. Rossi said the project overall was a reasonable one. He said no variance was required for the height or the third story of the ADU because it was all within the zoning ordinance, so that left the dimensional standards, the setbacks, and the square footage of the lot. He noted that there had always been a dwelling on the lot and that the lot was nonconforming, and nothing could really be done about the width of the front yard or the size of the lot. He said it was established as a residential lot and that continuing that use would be reasonable. He said the special condition of the lot was its odd shape and the intrusion on the right side property line that squeezed the lot tighter, as well as the right-of-way for the brick walkway on the left side. He said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said there was some concern expressed about light, space, and air regarding the setbacks and the dimensional variances. He said the building height was not really under discussion and that it would be more

conforming than the existing structure, so there would be additional light and air on a portion of the property. He said substantial justice would be done, noting that he did not see any benefit to the public by denying the variance, so the loss to the property owner would outweigh any benefit to the public if the variance were to be denied. He said granting the variance would not diminish the values of surrounding properties, noting that the neighborhood was going through some changes and modernizing, so he did not think that having a more contemporary style and code-compliant house on the lot would diminish the surrounding properties values in any way and in fact would improve them. Regarding the hardship, he said the property had unique characteristics because of its geometry and the right-of-way, so dimensional relief along some of the lot lines was required to place a reasonably sized house on the property. He said the proposed plan struck a good balance between the size of the house and the requested relief and would not be a large deviation in terms of lot coverage. Mr. Mattson said the fact that the property used to be two lots demonstrated the historical density of it, and he thought the criteria of meeting the characteristics of the neighborhood and the spirit of the ordinance were met. He said adequate parking would also be provided, which he felt justified the small lot size accommodating the single-family home with an ADU.

Vice-Chair Margeson said she was more conflicted about the application. She said the opposite side of the street was being redeveloped in styles that were compatible with the proposed home but the houses adjacent to it were not compatible. She said the proposal had the potential to alter the area's historic character, noting that the existing house was a 1790s structure. Chair Eldridge noted that the neighborhood was in flux and would change over time anyway.

*The motion **passed** by a vote of 5-1, with Vice-Chair Margeson voting in opposition and Mr. Rheame recused.*

Mr. Rheame resumed his voting seat.

- B. 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) 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; 2) Variance from Section 10.5B34.60 to allow for a front setback from the lot line of 27 feet on Woodbury Avenue and 53.5 feet on Gosling Road where a maximum of 20 feet is required; 3) Variance from Section 10.5B83.10 to allow for parking spaces to be located between the principal building and the street; 4) Variance from Section 10.835.31 to allow outdoor service facilities to be located within 34.5 feet and 40.5 of a lot line where 50 feet is required. 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 10.843.33 to allow for pump islands to be located within 34.5 feet of the lot lines where 40 feet is required; 7) Variance from Section 10.1251.10 to allow for an aggregate sign area of 309 s.f. where a maximum of 223.5 s.f. is allowed; 8) Variance from Section 10.1251.20 to allow a 134 s.f. freestanding sign where a maximum of 100 s.f. is allowed; and 9) Variance from Section 10.1253.10 to allow for a freestanding sign at a height of 26.5 feet where a

maximum of 20 feet is allowed. 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 31:28] Attorney Christopher Drescher was present on behalf of the applicant, along with the project's sound engineer Eric Simpson and one of the owners Christopher Rice. Attorney Drescher said they addressed the Board's previous concerns about the drive-thru and the drive-thru speaker by bringing the speaker closer to the building, thereby increasing the distance between the abutting residences by about 40 feet. He said they also planned to put in an 8-ft stockade fence and several plantings. He explained why their submitted sound study showed that sound would not be an issue. He said they planned to reduce the signage by 32 percent and that the proposed pylon sign would be relocated to match the existing pylon sign, so they no longer needed variance relief for the 10-ft sign setback. He said they would offer a "Welcome to Portsmouth" sign that they would work with the City on and that they also proposed two outdoor seating areas, some sidewalks throughout the site, a bike rack, and a landscaping plan to add more plantings.

[Timestamp 36:45] Sound engineer Eric Simpson said he did several sound studies about gas station operations and the drive-thru speaker and said their sound profiles were not substantially different from the existing gas station. He said what drove sound was the volume of traffic and the traffic speed and he said the sound decibels would be reduced in the day and evening. He said the proposed larger pitched roof would significantly reduce the ambient sound in terms of the abutting residential building. He said the speaker's sound was generally one decibel and would not be heard, and the proposed fence and plantings would help reduce the sound further. He said his report concluded that there would not be an impact to the residences behind the property.

[Timestamp 44:20] Mr. Rheume said the residential buildings were 62 feet away but there was open yard space that the abutting resident could make use of. He asked how the residents would make the best use of their backyard. Mr. Simpson said the fence and plantings would result in a 10-15 decibel reduction. Mr. Rheume asked about the effect the sounds coming from the queue lanes, like music and revving engines, would have on the abutting property. Mr. Simpson said there was a gas station there now. Mr. Rheume said discussions at a drive-thru window could be distracting and more impactful than music being played. Mr. Simpson said a higher pitch sound attenuated faster than a lower pitch, so he would rather see a drive-thru speaker than a heavy bass sound system that permeated everything. Mr. Rheume said the pylon sign on the Woodbury Ave side was not really changing, so the applicant was looking for the same relief as before. He said the sign also had two logos and various gas prices, as well as a new diesel fuel sign, which all contributed to some of the sign's height. He asked if the applicant considered getting the height back within the box and the total square footage. Attorney Drescher said they pulled a sign back and got rid of another sign but still needed relief to fit all the things on the sign. Mr. Nies asked what the dimensions of the existing signs were. Mr. Christopher Rice said he did not know. Mr. Rossi confirmed that the ordering board was illuminated and asked if the impact of the lighting would reach the upper floors of the abutting Portsmouth Housing Authority residences. Mr. Rice said they would not see much light from the board because it would be below the fence's height. It was

further discussed. Vice-Chair Margeson asked if the signs were dark-sky lighting and was told that they were. Attorney Drescher said the hardship was that the lot was a small corner lot.

[Timestamp 1:00:35] Mr. Nies said there were some discrepancies between what was written up and what the requests were. For Variance Request One, he said one page said the convenience store would be oriented flush against and present facing to Woodbury Ave, then another page said the request was for a front setback of zero feet where a maximum of 20 feet is required. Mr. Nies said the applicant said he did not want to be closer to the street but the package said he was asking for a front setback of zero feet when he was really asking for something like 30 feet. He said the writeup did not match what the applicant was asking for. It was further discussed. Mr. Nies said another page indicated that bypass lanes, drive-thru lanes, and stacking lanes would come within 30 feet of the required 30-ft setback. He asked if that meant it would be 17 feet from the setback, noting that the package said it would be 13 feet. He said the applicant said something similar on another page regarding Variance Request 6 by indicating that it could come within 30 feet of the required 40-ft setback, but Mr. Nies thought the applicant meant that it was a setback of 28 feet. Attorney Drescher said it was a required 44-ft setback and they would be within 28 feet of the boundary. Mr. Nies said, regarding Variance 2, the applicant was not really asking for a front setback of zero feet but rather 27 feet and 53 feet from Gosling Road. Attorney Drescher said it was difficult to word.

[Timestamp 1:04:46] Mr. Rossi asked what the maturity of the plants would be at the time they were installed. Mr. Rice said they would be 6-8 feet. Mr. Rossi asked if the offer to install a welcome sign was included in the variance request. Mr. Rice said it would have to be discussed with the City first. Mr. Rossi asked if the offer was contingent on receiving the variances for the other signage. Attorney Drescher said it would be contingent on the redevelopment. Vice-Chair Margeson said the gas station would remain a gas station but the problem was that the zoning had changed and had housing types and compatible commercial and civic uses, with high-quality pedestrian areas. She asked what the applicant's hardship was for not building something more compatible with the Gateway One Corridor. Attorney Drescher said the tanks and preconforming uses were logical uses.

Chair Eldridge opened the public hearing.

### **SPEAKING IN FAVOR OF THE PETITION**

No one spoke.

### **SPEAKING IN OPPOSITON TO THE PETITION**

Eric Kilchenstein said he represented the abutter Dunkin's, who thought the proposal would be a drastic change due to the way the applicant was trying to jam everything in. He said the intersection was a busy one that would get busier due to all the ongoing development. He said they objected to some of the signage and felt that the gas station seemed to be more of a restaurant. He said they were also concerned about the amount of setback relief asked for.

Attorney Drescher said they would have a drive-thru and would be selling coffee but noted that what was already on the site had a lot of relief, as well as the nearby drive-thrus. He said it would be healthy for another drive-thru business for the sake of competition as the population grew.

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

## **DISCUSSION OF THE BOARD**

[Timestamp 1:15:29] Mr. Mattson said a lot of relief was being asked for. He said if there was a property that would be tough to make work with the Gateway District, it would be a gas station with such a minimal setback. He said the proposed gas station would be better than what was there. Regarding the signs, he said there were multiple company names on the sign, which was different than a single brand name. Mr. Rossi said the sound study was a significant factor, and one thing that did not come up in the discussion was the mitigating effect that the building design would have on the current level of sound on the neighboring residential property. He said it seemed like it would more than offset the intrusive sound from the sign board and the ordering station. He said he was not so sure about the math on equating decibel reductions to percentages, but the basic principle seemed sound. He said steps were taken to achieve the goal of comporting with a pedestrian-friendly environment, even though the pedestrians would be coming into and exiting the property using the sidewalks instead of walking along the streetscape. He said he was not convinced that the hardship requirement for the signage was satisfied, however.

[Timestamp 1:20:35] Mr. Rheume said there was a photo in the packet of the existing signage had just the brand of the fuel being sold and one sign that indicated the price of three fuel varieties. He said the use was allowed by a Conditional Use Permit and would have to go before the Planning Board for two purposes: conditional use for a service station and the drive-thru if included. He said the Board went out of its way to give the applicant a second chance, and now the applicant was trying to do some things regarding the pushback the Board gave them the first time as well as improving the pedestrian nature and reducing the signage, but he was still concerned with the pylon sign and said just because the applicant had it at their other stores did not reflect what the ordinance was trying to enforce in the Gateway District. He said the sound study was good but that he still had concerns about the drive-thru function, and he thought the sign and the drive-thru were two areas that he was not convinced the applicant needed relief for. Mr. Nies said he struggled with the variance request for the signage and the drive-thru but thought the setback relief made sense for the proposed use. He suggested that the Board make three motions, one each for the signs, drive-thru, and setbacks. Vice-Chair Margeson said she was on the fence about the application because it was a significant expansion of what was currently on the property. She said she also had concerns with the drive-thru and sign variance requests. She said the site was changing more from a gas station with an accessory snack shack to a store with an accessory gas station. It was further discussed.

## **DECISION OF THE BOARD** [Timestamp 1:33:38]

*Mr. Rheume moved to **grant** Variances 1, 2, 3 and 6. Mr. Mattson seconded*

Mr. Rheume said the sound study convinced him that the plan made the most sense with regard to the property. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said the use was allowed through a Conditional Use Permit and was currently on site and was changing more toward what the ordinance was trying to do in the Gateway District, like making it slightly more walkable and pedestrian-serving. He said that use could comply with what the ordinance was trying to accomplish in the Gateway District, like eliminating parking between the street and the buildings and having a front lot buildout to feel that it was part of the road rather than something separate from it. In terms of the use, he said the applicant made a good argument that they were improving upon what was currently there and it was not dissimilar from other uses next to it. He said it made the most sense for the neighboring properties in terms of being allowed and was in keeping with the general characteristics of the neighborhood and the spirit of the ordinance. He said substantial justice would be done because the public wanted that new look and feel and hopefully over time more of that type of business would be seen in the Gateway District. He said granting the variances would not diminish the values of surrounding properties. He said there was a residential use right behind the gas station but what was proposed was beneficial to that residential use. He said the property was unique because it was a corner lot with a particular use and it had the residential abutting it. He said the applicant's sound study indicated that the sound issue would be improved. He said it made the most sense in terms of layout in benefitting the general public and that it was an allowed use within the conditional use requirements. Mr. Mattson concurred and had nothing to add.

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

*Mr. Rossi moved to **grant** Variances 4 and 5 of the petition as presented and advertised, seconded by Mr. Mattson.*

Mr. Rossi said the sound study and the commitment to plant mature plantings along the stockade fence would make the property into the best shape it could be. He said there were currently gas pumps that were as disruptive in noise as the proposed use so he did not see a worsening situation with regard to noise from vehicles idling. He said he did not see anything that would serve the public interest in denying the variances. He said it would not create any new safety, pollution, or spill hazards, so granting the variances would do substantial justice because the loss to the applicant would not be outweighed by the benefit to the public if the variances were to be denied. He said granting the variances would observe the spirit of the ordinance, noting that the purpose of the Gateway District was to facilitate a broad range of housing types, together with compatible commercial fabrication and civic use and so on, and he believed that having a drive-thru food facility would be compatible with the objectives of the Gateway One District. He said granting the variances would not diminish the values of surrounding properties due to the aesthetic improvements of the site and the removal of the gas pumps that were close to the residential area. He said the reduction of noise due to the building design and location would be an improvement. He said he did not think that allowing Variances 4 and 5 would negate those values. He said literal enforcement of the ordinance would result in an unnecessary hardship. He said the special conditions of the property that militated toward allowing the variances were the fact that the building had to be placed in that location to accommodate the gas station and could not be moved to

achieve the required or fully compliant dimensional standards. Mr. Mattson concurred and said a big factor was knowing that fast-moving vehicles were noisy and stop-and-go vehicles placing orders would not be as detrimental as some thought they would be. He noted that sound also exponentially decreased from its source, so he did not think it would be a problem. He said based on the site plan and the parcel being on the corner relative to the residential lots, the benefits and tradeoffs of having the gas station and the food service aspect made sense. Mr. Rossi added that having that service in that location would not really alter the fundamental characteristics of the neighborhood because there were several drive-thru facilities scattered throughout the area.

Mr. Rheume said he would not support the motion. He noted that most of the queueing at Dunkin's was perpendicular to the neighborhood but farther away from the property line, and it also had some height variance on a hill. He said their menu board was pointed off at an angle, whereas the applicant's menu board and the ordering discussions would be directly in line with going across to the neighboring property. He said some of the other similar uses, like Aroma Joe's, were farther away from residential uses. Chair Eldridge said she also would not support the motion due to the late night and early morning traffic being too much for the neighborhood.

*The motion **failed** by a vote of 2-5, with only Mr. Rossi and Mr. Mattson voting in favor.*

*Mr. Rheume then moved to **deny** Variances 4 and 5, seconded by Vice-Chair Margeson.*

Mr. Rheume said the variance request failed the spirit of the ordinance and the hardship criteria. He asked what was unique about the property that said what the ordinance was trying to accomplish should not apply to this property. He noted that the applicant's own sound study said there would be leakage across into the property and that they were doing something to try to make it better but did not know exactly what it would be. He said it was being driven by the applicant wanting a drive-thru, gas station, and restaurant use on the very small lot. He said they were trying to jam too much stuff into it and shoving their need up against the neighboring property. He said the ordinance was trying to protect residential neighborhoods from the sound of cars queueing and people ordering at drive-thrus. He said the applicant improved the order board a bit, but the queueing was the same and there was nothing about the characteristics of the property that said it was a unique situation for a hardship. Vice-Chair Margeson said the Gateway District's commercial uses should be compatible with residential ones, and she did not find that a drive-thru was compatible. She said by granting the variances, the Board would direct a lot of traffic into the small property and the health, safety, and welfare of the residents in the back would be negatively impacted. She said the amount of traffic and vehicular circulation that would be generated through a drive-thru with a very tight spot in the back merited denial. Mr. Nies said people going through a drive-thru would idle for some time, and that impact was not the same as people just refueling and leaving. He said that would create potential health and welfare issues for the abutters.

*The motion **passed** by a vote of 5-2, with Mr. Mattson and Mr. Rossi voting in opposition.*

[Timestamp 1:53:45] *Mr. Nies moved to **deny** Variances 7, 8, and 9 of the petition as presented and advertised, seconded by Mr. Rossi.*



Mr. Nies said the request did not observe the spirit of the ordinance sign regulations that were adopted to maintain and enhance the city's residential and commercial characters. He said in the Gateway District, exceeding the limits would adversely affect the character of the area, particularly for a property that is one of the first at the entrance to the city and the Gateway District. He said G1 was a new zoning area since the original gas station was built. He said it was aspirational in some respects because the city was trying to change what was going on in the area and the zoning was designed to enhance the area. He thought approving the variance would work against the spirit of the ordinance. He said the property's special conditions did not support the need for a variance. He said the existing signs were much smaller and there was no evidence presented that those signs were inadequate. He said the argument could be made that there were not as many activities currently taking place on the property compared to what the applicant proposed, but the freestanding sign area exceeds the limits by 34 percent and the height by close to 32 percent, and he did not believe the applicant demonstrated any real hardship as to why they could not meet their needs by staying within the criteria of the ordinance. Mr. Rossi concurred and had nothing to add. Mr. Rheume said he would support the motion even though he did not fully agree with it. He said Variance 7 was something he would be willing to approve as an overall aggregate sign area but he did not see any reason for the pylon sign and thought it was being driven by the applicant's approach toward their business and wanting all kinds of visibility for the various aspects of the business. He said he was very much against Variances 8 and 9. He suggested that the applicant return for Variance 7 and explain a sign package that would reduce the 34 sf of the pylon sign yet continue to have additional signage above the limit. He said there was some room for it without invoking *Fisher v Dover*. Chair Eldridge agreed with Mr. Rheume.

*The motion to deny **passed** by a vote of 6-1, with Mr. Mattson voting in opposition.*

- C. REQUEST TO WITHDRAW** - The request of **Mezansky Family Revocable Trust (Owners)**, for property located at **636 Lincoln Avenue** whereas relief is needed to demolish an existing detached garage and to construct an addition to the primary structure which requires the following: 1) Variance from Section 10.521 to a) allow a 2 foot left side yard setback where 10 feet is required; b) allow a 12.5 foot rear yard setback where 20 feet is required; c) allow 39% building coverage where 25% is the maximum allowed; 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 148 Lot 17 and lies within the General Residence A (GRA) District. (LU-25-27) - **REQUEST TO WITHDRAW**

*Mr. Mannle moved to **grant** the request to withdraw the petition, seconded by Mr. Rheume. The motion **passed** unanimously, 6-0, with Mr. Nies recused.*

- D.** The request of **Life Storage LP C/O Sovran Self Storage (Owner)**, for property located at **70 Heritage Avenue** whereas relief is needed for after-the-fact installation of mini-storage units which requires the following: 1) Variance from Section 10.531 to allow a 2-foot rear setback where 50 feet is required; and 2) Variance from Section 10.330 to allow the

expansion of a nonconforming use where it is not permitted. Said property is located on Assessor Map 285 Lot 11-B and lies within the Industrial (I) District. (LU-25-36)

### **SPEAKING TO THE PETITION**

[Timestamp 2:07:08] Attorney Monica Kaiser was present on behalf of the applicant, with Brian Leavitt of Life Storage. Attorney Kaiser reviewed the petition and noted that the property was a large one that directly abutted Walmart. She said it had a commercial building and storage units and that the owner had installed a collection of mini units at the rear of the property that were placed on impervious pavement close to the lot line. She said they could not be moved closer to the main building due to changes in elevation, deliveries, and vehicular circulation. She said the mini storage units were accessed by people on an as-needed basis. She reviewed the criteria.

[Timestamp 2:18:13] Mr. Rossi asked why the petition was before the Board after the fact. Attorney Kaiser said the business owners were used to setting up similar places in other parts of the country and considered them temporary buildings. She said they had not thought it would be different in Portsmouth but then realized they needed relief and had filed the request for variances promptly. Mr. Rossi said the definition in the ordinance for a temporary structure was for one designed to be there for 180 days or less. Attorney Kaiser said she did not think the applicant's facilities person thought it through. Chair Eldridge asked when the mini storage units went in. Attorney Kaiser said it was in December 2024 and that the applicant was given a deadline to apply for relief.

[Timestamp 2:20:38] Mr. Rheume asked if it was the first time the applicant was using that portion of the property. Attorney Kaiser agreed. Mr. Rheume further discussed the history of the granted relief for the property, and he asked what allowed the three one-story structures to have a nonconforming use. Mr. Leavitt said they got the property in July 2023 and cleaned it up, and he was not sure how long those structures had been there but that they were portable units and could be moved around. Mr. Rheume asked if the applicant would have more of them if they got the 2-ft setback variance. Attorney Kaiser said she did not think so and believed the units would be approved for the locations they were in. Mr. Rheume said the Board voted in 2008 to deny another request to expand upon the allowable storage in the building with the reasoning that there was nothing inherent in the land from preventing a hardship, and the zoning restriction did not interfere with the reasonable use of the property. He asked why the applicant now thought the Board should look at it differently. Attorney Kaiser said the rezoning was significant and a substantial change, but the parcel was still zoned Industrial. It was further discussed. Vice-Chair Margeson said the parcel was zoned Industrial and she did not understand why it was an expansion of a nonconforming use. She asked if it was because it was for self storage. Ms. Casella said self storage was not listed in the Table of Uses. It was further discussed.

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 2:33:41] Mr. Rheume said it was a nonconforming use that was not allowed in any of the zones and that the Board did not know how some of the structures got built but they were there, and every square footage of the property was being taken up by that nonconforming use, including accessways to get stuff in and out of the storage units. He noted that the Board denied a previous request from another applicant for expansion of that nonconforming use, and now they were talking about a 2-ft setback for temporary structures where 50 feet was required. He said the G1 District allowed things to be closer, but it was more like ten feet. He said the structures would deteriorate more rapidly than a more established structure would and would be right up against a property line in a nonconforming use on a property that had been maxed out. He said future redevelopment of that could lend itself to something very different than what was seen there today. He said the variance relief would run with the property and the storage structures could be replaced in the future by other structures of different sizes and dimensions.

*Mr. Rossi moved to **deny** the petition as presented and advertised, seconded by Mr. Mannle.*

[Timestamp 2:37:42] Mr. Rossi said it was only necessary to identify one deficiency to deny the petition, and in this case it was the lack of hardship. He said there was nothing special about the property that meant that the structures must be two feet away from the property line or that they must exist at all. He said the applicant failed to establish hardship in support of those structures. Mr. Mannle concurred and had nothing to add. Mr. Mattson said he agreed with the motion in terms of the hardship but said the units were relatively short, given the grade. Mr. Rheume said he would support the motion because there was no hardship. He explained why there was nothing unique about the property that said it should be allowed to have that much more additional nonconforming use, especially that close to a property line in the G1 District. Mr. Nies said he would support the motion primarily because of the setback issue but did not think a hardship had been demonstrated.

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

- E. The request of **Port Hunter LLC (Owner)**, for property located at **361 Miller Avenue** whereas relief is needed to demolish the existing detached garage and construct a new detached garage which requires the following: 1) Variance from Section 10.521 to allow a building coverage of 26% where a maximum of 25% is permitted; 2) Variance from Section 10.573.20 to a) allow an accessory building with a 10.5 foot rear setback where 20 feet is required; and b) a 6 foot left side yard setback where 10 feet is required. Said property is located on Assessor Map 131 Lot 33 and lies within the General Residence A (GRA) District. (LU-25-76)

## SPEAKING TO THE PETITION

[Timestamp 2:42:29] Attorney Colby Gamester was present on behalf of the applicants Elizabeth and Tim Pesch. Attorney Gamester reviewed the petition and noted that there was a six-unit multi-

family dwelling and a two-car garage on the lot. He said the owners renovated the property but that the garage was unsafe and could not be used for parking. He said they wanted to demolish it and build a new garage. He said there were drainage problems for the property and surrounding ones. He said the new garage would not threaten the old maple tree, would improve parking and traffic management of the site, would alleviate the drainage issues, and would provide storage space and more open space on the property and would be more aesthetically pleasing. He said the 210-year-old tree was driving the variance relief and that it was the oldest silver maple on record in Portsmouth. He said the backyard would be landscaped and pervious pavement would be added, along with additional parking in the rear. He said the second floor of the garage would have a bath, storage room, and an office and would not be rented to a third party or be an ADU. He said the abutters were aware of the garage's second story proposed use. He reviewed the criteria.

[Timestamp 2:57:51] Mr. Rossi asked how long the tree was expected to last. Elizabeth Pesch said the Big Tree Project had told her that it was the healthiest silver maple in the top twelve in the State. She said they would have a fertilizing program for the tree. Mr. Rossi asked what was available in terms of covenants or trusts to stipulate that the preservation would continue with the property. Attorney Gamester said he didn't know of anything specific other than the owner could create a restrictive covenant. Mr. Rossi said he hoped the owner would have a restricted deed covenant. Vice-Chair Margeson confirmed that the LLC owned the structure and that none of the members would live in the house and that they would be the only users of the office. Mr. Nies said the letter indicated Home Occupation 1, with no non-resident employees. Attorney Gamester said the LLC did not have employees and if they did, they would not allow them on the property. Mr. Rheume said the calculated parking requirement was eight parking spots but the applicant was providing nine. Attorney Gamester said 8.6 parking spaces were required and they were rounding it up to nine. He noted that it would also go through site plan review and if it failed, they would apply for a Conditional Use Permit. Mr. Mattson asked if the applicant tried to find out if the new structure could fit within the setbacks. Attorney Gamester said they wanted to create some usable open space between the garage and the main structure and improve turning radiuses.

Chair Eldridge opened the public hearing.

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

[Timestamp 3:06:27] Joanna Bromley said she was a tenant and was impressed with the quality of the renovations put into the property. She said the LLC was the best landlord she ever had and she thought removing the existing garage would free up a lot of space. She said the landlord would be sure to carefully remove the garage and not disturb the tree.

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

### **DECISION OF THE BOARD [Timestamp 3:08:15]**

*Mr. Nies moved to **grant** the variance for the petition as presented and advertised, seconded by Mr. Mannle.*

Mr. Nies said granting the variance would not affect the health, safety, and welfare of the neighborhood would have no effect on light and air, and would not alter the essential characteristics of the neighborhood. He said it would be consistent with the spirit of the ordinance because the new garage would be much better. He said granting the variance would do substantial justice because there would be no benefit to the public by denying the variance, and there could possibly be harm to the public because it would likely adversely impact the historic tree. He said granting the variance would not diminish the values of surrounding properties, noting that there was no evidence of that, and if anything, it would likely improve them by replacing the decrepit garage. He said the property had special conditions of having a large multi-family residence, which was unusual in that neighborhood, and it had a large historic tree in one corner that limited where the garage could be placed. He said the way it was presently set up made for limited parking that was difficult to access. Given those special conditions, he said there was no fair and substantial relationship between the purposes of the ordinance and its specific application to the property. Mr. Mannle concurred and had nothing to add. Mr. Rheume said he would support the motion because the positioning of the large structure on the property butting up against a mirrored garage on the neighboring property made him feel better about the project. He said there was enough of a setback that he did not think light, air and intrusiveness on the neighboring properties would be a problem

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

### **III. OTHER BUSINESS**

#### **A. Chair's Item to Discuss Time Change for Scheduled Meetings**

[Timestamp 3:12:00] The Board discussed changing the time of the meeting to 6:30 pm. Mr. Nies said he was concerned about whether the applicants could be at the meeting by then. Mr. Rheume said the 7:00 time was to allow time for the Board and the public to have dinner and so on. Mr. Rossi suggested that the Board consider rotating an alternate into a voting position even though it wasn't needed. Mr. Mattson said the ideal alternate would see the position as an apprenticeship. Mr. Rheume said the people he talked to as potential candidates thought they would have a lot of conflicts of interest. Chair Eldridge asked the Board to give it some further thought.

### **IV. ADJOURNMENT**

The meeting adjourned at 10:23 pm.

Submitted,

Joann Breault  
BOA Minutes Taker