

**MINUTES OF THE
BOARD OF ADJUSTMENT WORK SESSION
CONFERENCE ROOM A
MUNICIPAL COMPLEX, 1 JUNKINS AVENUE
PORTSMOUTH, NEW HAMPSHIRE**

6:00 P.M.

March 31, 2026

MEMBERS PRESENT: Beth Margeson, Chair; Jeffrey Mattson, Vice Chair; David Rheaume; Paul Mandle; Thomas Nies; Thomas Rossi; Robert Sullivan; Mike Lucas, Alternate

MEMBERS EXCUSED: None.

ALSO PRESENT: Stefanie Casella, Planning Department; Jillian Harris, Planning Department; Peter Stith, Planning Department; Trevor McCourt, Deputy City Attorney

I. WORKSHOP

A. Discussion with Planning Staff [Video timestamp 12:29]

Mr. Stith reviewed the zoning updates that were adopted starting from 2024 as follows:

- May 2024 – Electric vehicle charging (EVC) stations had two definitions added, EV Fueling Space A and B. Fueling Space A is a typical residential electric service, and Space B is more like what would be seen in a gas station.
- June 2024 –Due to a request from the artists community who wanted to have classes in their homes, an amendment was made to the Home Occupation ordinance. Occupation 1 will allow for up to two clients or visitors at any one time, and Occupation 2 will be allowed by a Conditional Use Permit (CUP) for up to six clients at any one time.
- July 2024 – Amendments were made to solar in the Historic District Commission (HDC). Certain exemptions are allowed if the panels are not visible and pertain to roof-mounted solar.
- November 2024 – A Gateway Neighborhood Overlay District for Commerce Avenue and Portsmouth Boulevard was adopted that allows for an overlay to create housing modeled after the Gateway zoning and includes three options for work force housing with incentives.

- March 2025 – The section for mechanical units was removed and changes were made to fence heights so that an 8-ft fence can be on side and rear yards. One-family and two-family dwellings are allowed to have up to a 124-sf shed or structure that is exempt from zoning. It can be in setbacks and does not have to count toward building coverage. Saunas and hot tubs are exempt.
- May 2025 – Co-living was accepted as a use and a section on co-living was adopted.
- February 2026 – It was clarified that mechanical units are exempt from yard and building coverage. Power generators must be set back five feet to be consistent with the fire code.
- A definition was created for ground-mounted solar to distinguish between whether it is an accessory use or a principal use and where it is allowed in the City. As a principal use, it requires a Conditional Unit Permit (CUP).
- July 2026 – Accessory Dwelling Units (ADUs) are not treated as a single-family dwelling and the minimum and maximum are set at 750 square feet. An ADU has to be owned by the property owner and have a parking space and cannot be placed in front of the house.
- The Parking Statute states that more than one parking space per dwelling unit cannot be required for residential dwelling units. It was amended to have half a space up to 500 sf and one space for anything 500 sf or more.
- Albacore asked to change their zone to Single Residence B in the Gateway District and allow their museum as a permitted use. The Planning Board recommended changing it to Gateway 2 and changed the museum from special exception to permitted in Gateways 1 and 2.
- Map amendments were made. In 2024, properties were rezoned from the Commercial District to the Gateway District. Another ten parcels mainly along Lafayette Road will be considered.
- The Planning Board is working on removing parking regulations from the zoning ordinance and putting them into site plan regulations so that someone could ask for a waiver to have less parking than required. There will be other definitional changes made in the coming months for front lot line and lot area to make it clear what the City's intent is in measuring lot area.

[Timestamp 24:20] Mr. Rheume asked if the State law said residential had to be allowed in the Commercial and Industrial Districts. Mr. Stith said the City had not addressed it but it would go into effect in July. He said there were changes being made to that law. He said only Office Research, General Business, and perhaps another district did not allow residential. Mr. Nies asked if the Special Exception conditions in Section 10.232.38 meant that the BOA can impose off street parking and loading spaces in excess of the minimum requirements of the ordinance. He said it seemed inconsistent to allow the BOA to do that if the parking regulations were being moved somewhere else. Mr. Stith said it would have to be discussed further at the Planning Board level. Mr. Mannle asked what the status was on murals. Mr. Stith said he would recommend to the

Planning Board that they look into it. It was further discussed. Mr. Mannle asked if Ocean Road was being considered for rezoning, noting that 80-90 percent of the properties were zoned incorrectly. Mr. Stith said the Master Plan consultant was researching that issue and that it would likely be addressed at the Master Plan April 22nd meeting. Mr. Nies asked how the BOA provided feedback to the Planning Board about potential changes to the ordinance. Attorney McCourt said the most effective way would be for the two boards to meet and discuss the issues and then City Staff could help Chair Margeson write a letter to Chair Chellman to memorialize the thoughts in an organized way. Mr. Rheume said another method was to have a joint work session. Mr. Stith said if the same issues kept coming up, there might need to be a change in the ordinance.

[Timestamp 36:33] Mr. Nies said de minimis changes came before the BOA and that he wasn't sure if it was a zoning issue as much as a Planning Department process issue. He said it might be reasonable to say that, for certain dimensional requirements, lot coverage and so on, a variance within a certain type of percentage would not be required being elevated to the BOA for review and approval. Mr. Rossi said the ordinance did not state 25.0 percent lot coverage but said it was 25 percent lot coverage, so unless the last digit changed, it was not a change relevant to the ordinance. It was further discussed. Ms. Harris said if it was something like 25.6 percent, they rounded it up.

[Timestamp 42:08] The application process was discussed. Ms. Casella reviewed the process. She said the applicant would go to other boards if appropriate to get their building permit, and she explained the building permit process.

[Timestamp 45:47] Mr. Nies referred to the boiler plate language in Section 10.235 related to the consistency review. He said the Board noted at meetings that their variance granting was based on what they saw in front of them. He said sometimes what went to a different board was different than what the BOA saw. He asked how that section was interpreted and applied, and if it meant that anything could be changed as long as it did not conflict with a variance, or whether it was related to a particular project's design. Ms. Casella said every project and situation was different. She said they went back to the minutes and video tape to see how a motion was contemplated.

[Timestamp 50:01] Mr. Rheume asked how the Planning Board's interactions with DPW worked because they still had the authority to grant certain things like a driveway cut, and it had caused issues in the past. Mr. Stith said it was usually run by Eric Eby, the City's Parking, Transportation, and Planning Engineer. Ms. Casella said the online system also helped because it was fast and all connected. Mr. Mannle said there was often information in the application that either contradicted what was being asked for or contradicted what the applicant was telling the BOA. He said that was an instant denial for him. He recommended that the Planning Department Staff remove anything that the Board would not vote for from those kinds of applications before they came to the Board as well as any additional information that might add more questions from the Board. He also noted that a professional who represented the applicant should have stricter rules about not having things in the application that were not relevant to it. Chair Margeson said she would like to see more simplicity when the Board members were making motions and that the members should go be clear about how their findings match the criteria as well as make sure that the member who seconded the

motion aligns with the person who made the motion. She said a denial of an application was even more of a problem. It was further discussed. Ms. Casella said the first motion should list which criteria failed and then the Board could discuss it. Relating to a motion to amend, she said it would be clearer if it was part of the ultimate motion that was made. Attorney McCourt said it was helpful to him if all the reasons why the request for a variance failed were listed and not just one criterion. He said the factual rationale was important, especially if he had to go to court. Mr. Rheume said he might second a motion and feel that the motion maker did not capture everything in the criteria review. He asked how that would work. Attorney McCourt said the maker of the motion made the motion and the second seconded, then the motion maker went through their rationale. The Chair then asked if the second had anything to add, and then the second added their rationale and hopefully they agreed. Ms. Casella said it was important to make it clear. It was further discussed. Mr. Rossi said sometimes Board members expounded too much on matters of opinion, and he thought discussions should focus on fact and not hypotheticals. Vice-Chair Mattson asked if it was better to take the first two criteria together. Attorney McCourt said it was allowed. Ms. Casella said it only became an issue if they were taken together but only one was elaborated on. Mr. Rheume said the Board had to be diligent about reciting back to the Board after their discussion prior to the vote exactly what the Board was voting for. He said the Handbook for Local Officials noted that the Board did not have to reach a decision the same night but could render it for a later time. Attorney McCourt said the Statute allowed 90 days from the day of an application's receipt for the Board to make a decision, so the Board was within their right to move it to another night. He said the Board could also ask for more information or ask another City department or a consultant.

[Timestamp 1:20:31] Board member etiquette and member responsibilities were discussed. Attorney McCourt said it was not inappropriate to spend more time working through things in a complex application using a high degree of precision and that it was within the Board's judgement as to whether they spend more time talking through the issue to ensure that they got it right. He said it was also within the Chair's judgment.

[Timestamp 1:22:26] Mr. Rossi asked Attorney McCourt if he could provide periodic information to the Board about any of their prior decisions if they were being challenged in court and what the arguments were, and whether they were being supported or overturned. Attorney McCourt said he could give the Board written updates of appeals or talk to them. Mr. Rheume asked that the Board be notified of a court decision so that they could review it.

[Timestamp 1:24:17] Ms. Casella and Attorney McCourt explained the MapGeo process.

The following two items were merged.

B. Discussion with Deputy City Attorney Trevor McCourt

C. Q & A with City Staff

[Timestamp 1:31:13] The differences between the BOA and the Planning Board relative to the time allowed for the public to speak was discussed. Mr. Rheume asked City Staff to make sure the applicant provided his plans appropriately in either Landscape or Portrait mode.

[Timestamp 1:33:05] Mr. Rheume mentioned a case to the City's former attorney, Attorney Sullivan, in which Mr. Sullivan was concerned about the applicant's ability to come back to the Board due to Fisher v. Dover. He said he wanted to understand more about it. Mr. Sullivan explained that the application was close to a denial and that the discussion indicated that, with some small changes, the application might be approved. He said if the Board denied it due to Fisher v. Dover, the applicant could not return with small changes, so he suggested giving the applicant a month to amend the application and return. He said the application had to have a substantial change in order to come back to the Board, and with minor changes, the denial might turn into an approval.

[Timestamp 1:35:50] Mr. Rheume asked where the demolition ordinance and its enforcement stood. Attorney McCourt said the purpose behind the demolition ordinance was if a building got demolished anywhere in the City, there should be some forum where people have a chance to come out and express their views. He said the public had a chance to discuss it before the BOA, HDC, and Planning Board. He said the Demolition Review Committee was conceived as the gap filler for those buildings to be demolished that were not subject to site plan review approval, did not need a variance, or were outside of the Historic District. Mr. Rheume said the representation on the Demolition Committee reflected some strengths that the BOA did not have, like the Portsmouth Advocates. He said in the past, through the Demolition Review Committee process, compromises were made based on the historic nature of the properties or photos or documentation and he didn't think the BOA was equipped like that or wanted to spend the time working on it. Attorney McCourt said that wasn't the way it was currently set up. Mr. Rheume asked if the BOA would legally have a standing or could make a stipulation to say that the ability to appeal to the Demolition Committee would not be negated by an action that the Board is taking. Attorney McCourt said that would be contrary to the terms of the ordinance. Mr. Rossi asked if the Board would have any standing to deny an application for a variance based on their opinion that it had the possibility of demolishing a structure. Attorney McCourt suggested discussing the topic in a nonpublic setting.

[Timestamp 1:41:38] Mr. Rheume said sometimes applicants brought things that the Board thought were brought before TAC or the Planning Board for site plan review or subdivision review that he was not always sure was something the Board could look at. It was further discussed. Ms. Casella said the Planning Department could work on a cheat sheet.

[Timestamp 1:45:37] Time limits for speakers was discussed, as well as a better way to make sure the speakers were more concise to try to give equal balance to others. The issue of the applicant handing in additional written information at the meeting was discussed.

[Timestamp 1:51:31] Mr. Nies said he was uncomfortable waiting until the public meeting to ask for a site walk because it would push the applicant back a month. He suggested asking the Chair if there should be a site walk, which would give her control and the City Staff would not get

bombarded by individual members asking for or objecting to a site walk. Chair Margeson said it should be done before hearing the application and that it should be run through Ms. Casella first. It was further discussed. Mr. Nies asked what the agenda order was based on, noting that he felt sorry for a special exemption request that was heard later in the evening. Ms. Casella said the petitions could be taken out of order. Mr. Stith said the applicant was told that the sooner they got their application in, the higher on the agenda it would be. It was decided that the easiest thing to do would be to take the applications out of order at the meeting. Mr. Nies asked if there was training available for the revised Ethics ordinances. Attorney McCourt said it was being rolled out to new members as they were inducted on the boards but wasn't sure how that process was playing out in practice. He said he brought it to the attention of the Deputy City Manager. The new members on the BOA said they had not received the ethics training yet. Chair Margeson said members of every board should be trained on the revised Ethics ordinance.

II. OTHER BUSINESS

There was no other business discussed.

III. ADJOURNMENT

The meeting adjourned at 8:00 p.m.

Submitted,

Joann Breault
BOA Minutes Taker