

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

7:00 P.M.

August 25, 2026

MEMBERS PRESENT: Beth Margeson, Chair; Jeffrey Mattson, Vice Chair; David Rheaume; Thomas Nies; and Thomas Rossi

MEMBERS EXCUSED: Mike Lucas, Alternate; Robert Sullivan

ALSO PRESENT: Stefanie Casella, Planning Department

Chair Margeson called the meeting to order at 7:00 p.m. The applicant said they would go forward with the petition even though there were only five Board members present.

I. NEW BUSINESS

- A.** The request of **Road to the West, LLC (Owner)**, for property located at **140 West Road** whereas relief is needed to establish an indoor recreation space, restaurant, event space, and outdoor dining area which requires the following: 1) Variance from Section 10.440 to allow a) Use #9.43, a restaurant and function room with an occupant load from 250 to 500 where it is not allowed, b) Use #4.30, indoor recreation use where it is not allowed, and c) Use #19.50, outdoor dining as accessory use to a permitted principal use; 2) Variance from Section 10.1113.20 to allow parking spaces between the principal building and street; and 3) Variance from Section 10.1113.41 to allow a 2 foot parking space setback where 50 is required. Said property is located on Assessor Map 252 Lot 2-1301 and lies within the Industrial (I) District. (LU-26-107)

SPEAKING TO THE PETITION [Video timestamp 4:33]

Attorney John Bosen was present on behalf of the owner and applicant, along with Alex Choquette, owner of Road to the West and the Black Rock Social Club; project engineer Alex Ross; project architect Mark Gianniny; Black Rock Social Club General Manager Chris Hollis; and Executive Director of Programming Christine Schindler. Attorney Bosen said the Black Rock Social Club is a venue that supports local charities and aims to raises over \$1 million dollars annually for local nonprofit organizations. He said in 2022 they received approval from the Board to convert the prior use at 140 West Road from a trampoline park to the Black Rock Social Club. He said it was currently fit out for live music and had a restaurant and bar for members and guests. He said a variance was also approved to allow parking. He said the 2022 plans included a restaurant and bar

but an oversight occurred because the applicant did not ask permission for them. He said things became complex in November 2022 when the building permit application was filed. He said the amended site plan was approved by the Planning Board and a building permit was issued in June 2023. He said the applicant was informed in November 2023 that the plans to convert the two floors were cost prohibitive, so the applicant sought a refund for some of the fees and a waiver was signed that abandoned the prior approval. He said permits were then received for the kitchen and bar to be installed and the parking lot was repaved. He said the 2022 approval did not anticipate all the activities that Black Rock Social Club has or outdoor dining, and the permit did not specifically reference a fundraiser using a comedy show or a band. He said the applicant was now addressing the fact that they did not ask for the restaurant use and were requesting variances for outdoor dining and parking. He reviewed the variance criteria.

[Timestamp 17:19] Mr. Rheume asked what the outdoor dining would look like. Mr. Gianniny said there were currently 10 picnic tables in front of a container that would be converted to serve drinks and that they wanted to add a patio for additional seating. He said there was a hatched area for crossing the driveway and the seating area would be closed off to regular vehicular traffic by fences. Mr. Rheume asked if the grass area would be made into an impervious surface. Mr. Gianniny said the area with the picnic tables would stay grass and the only impervious would be what exists now. Mr. Rheume asked how the parking was calculated. Mr. Gianniny said the Staff Report had a parking count of 78 spaces based on the requested use, but he had 95 spaces because he broke up the indoor recreation, restaurant, and office space. He said the parking lot was striped for 78 spaces and that more striped spaces could be added. Mr. Rheume ensured that City Staff was confident that the requested relief from Use # 9.43, a restaurant and function room with an occupant load from 250 to 500 where it is not allowed, would cover everything that the applicant described as well as the kinds of events, and that it would be covered by the restaurant use.

[Timestamp 23:30] Mr. Nies said a place of assembly is not called out in the Legal Notice. He said a place of assembly is allowed to have entertainment, comedy, or music but they are not listed in the ordinance as an accessory use for a restaurant. He said if the Board granted the restaurant and function room variance as listed in the Legal Notice, he asked if it would cover the applicant's intent to have entertainment as well. Ms. Casella said that, unless the applicant had a different version of a place of assembly, she was confident that it would. Mr. Nies asked how the fence would not affect the parking spaces behind the building. Mr. Gianniny said they those parking spaces would be used by the staff and others. Mr. Nies asked if there would be music and entertainment in the outdoor dining area. Attorney Bosen said there currently wasn't but there was plenty of room inside to do so. Mr. Nies said the application stated that the hours of operation were late afternoon into the evening, and he asked if there was an intent to have daytime conferences or meetings in the function room. Attorney Bosen agreed. Mr. Rheume asked where the fence would go. Mr. Gianniny said it would start at the corner of the building and then go across the property. He said there would be several gates and described what they were and in what locations. Chair Margeson asked Attorney Bosen how the benefit to the applicant would outweigh the loss to the public by granting the variance for substantial justice. Mr. Bosen said there would be no benefit to the public if the variance were denied because it was the Industrial Zone.

Chair Margeson opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION [Timestamp 30:21]

Owner Alex Choquette said their main mission was to raise money for nonprofits.

Kevin Watt of Metropolitan Pipe & Supply Co. said they were the neighbor to the proposed patio seating and that he had 24 parking spaces that the applicant could use.

Michael Blackman of 27 Albany Street said Black Rock raised money for workforce housing.

Shawn Tracy of 24 Johnson Court said Black Rock was community oriented and created a lot of local jobs, and he did not think the variances would inconvenience anyone.

Kevin Dodge of 99 Hanover Street said he met Mr. Choquette in 2017 when he was sponsoring an event for veterans and that he joined Black Rock because they support veterans and other charities.

Larry Vannatta of 5 Wood Road, Durham, said he owned several entertainment venues in the area and knew what it was like to run a business like Black Rock. He said he attended several of Mr. Choquette's fundraisers and thought the place was inviting and a great asset to the community.

Anna Hayes of 1 Cate Street said Black Rock had affordable membership options for everyone.

Attorney Frank Cimler of Dover said he had produced a lot of big Boston acts like Aerosmith and that Black Rock's interior was one of the nicest venues in New England. He said his son was serving in Iraq and asked that the Board support Mr. Choquette because he supports veterans.

Patrick Kane of 213 Gates Street said he was a partner at High Street Insurance and Financial Services and thought Mr. Choquette was one of the finest gentlemen he knew.

SPEAKING IN OPPOSITION OR SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke. Chair Margeson closed the public hearing.

DISCUSSION OF THE BOARD [Timestamp 42:24]

Mr. Rheume said it was like dividing the application up into two pieces, dimensional variances related for parking and the parking between the principal building and the street. He said the building had two front yards in the sense that it was on a curve, so parking on both those sides would require variance relief. He said the Board recognized that the desire to have parking behind the structure was an aspirational goal in the zoning ordinance, but at the same time they realized that having the applicant relocate all his parking and doing the building over would be an undue burden on him, with very little public benefit. He said none of the properties along West Road had

all their parking behind them and not many properties complied with the parking being set back 50 feet as required. He said the applicant had an existing condition and the ask was reasonable. Related to the use variances, he said the neighborhood was zoned Industrial from West Road to Peverly Hill Road but the Gateway 1 District was across the street from the applicant's building and Gateway 2 was just up the street. He said the Eversource building was in the G1 District even though it probably had the most industrial use in the neighborhood, but nothing immediately adjacent to the applicant's parcel was heavily industrial. He said some of the applicant's proposed uses would be allowed by special exception and that outdoor dining was a permitted accessory use in the G1 and G2 Districts. He said the area in the future might change to match some of what is between West Road and Lafayette Road. He said those factors weighed in favor of the applicant. He said the Planning Board would consider partitioning some of the parking at the Site Plan review. Chair Margeson said she would not support the application because it was an expansion of uses with respect to the property. She said in 2013, the Board granted the request to convert the industrial building to a health club and then a private indoor recreation facility, and now the applicant was asking for a restaurant, a place of assembly, and an outdoor dining area. She said it just kept going on and on. She said it was up to the City Council to perhaps rezone the area but she did not find that the area supported this kind of use. She said granting the variance would introduce a use of nighttime events, which apparently was already happening on the applicant's parcel. Vice-Chair Mattson said it seemed reasonable to allow the parking to be maintained as it is because it was the Industrial Zone and the neighborhood was not built up like the downtown area. As for the uses, he said they were not allowed in an industrial zone but they were reasonable. He said the Industrial Zone would be more imposing on the applicant's establishment than the establishment's impact on the Industrial Zone. He said the uses were compatible with each other and could be justified. Mr. Nies said he was concerned about expanding the use to an outdoor area. Mr. Rossi said he would support the variance requests. He said sometimes things require a fine-toothed analysis of the pros and cons, but this was not one of those cases and it was largely variances to reflect the current conditions on the ground, which are operating in harmony with the surrounding area, and he did not think there was any rationale for taking it apart further than that. It was further discussed. Mr. Rheume said the variance requests for an outdoor restaurant and recreation use would run with the land. He said the outdoor use was something new from the original application but it was a situation where the applicant was somewhat there and he was more comfortable with it than he normally would be.

DECISION OF THE BOARD [Timestamp1:01:18]

*Vice-Chair Mattson moved to **grant** the variances for the petition as advertised and presented. Mr. Rheume seconded.*

Vice-Chair Mattson said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said the proposed use was allowed in the ordinance but it was just in this specific industrial zone that it was not allowed. He said however that it is on the edge of that zone near another zone where it is allowed and was only separated by a street, which he thought is a special condition. He said the essential character of the neighborhood would

not be altered because the building and use already exist and the neighborhood is somewhat eclectic from an industrial standpoint. He said it would not threaten the public's health, safety or welfare or otherwise injure public rights. He said the parking already exists and does not have a negative impact. He said granting the variances would do substantial justice because the benefit to the applicant would not be outweighed by harm to other individuals. He said the values of surrounding properties would not be diminished, noting that the Board did not hear expert testimony but had no reason to think the way the property is being utilized would be detrimental to the neighboring properties. He said literal enforcement of the ordinance would result in unnecessary hardship. He said there were special conditions that distinguish it from other properties, including the physical reality of the property being on the sharp bend in West Road that was somewhat unique and the existing structure's location with the parking where it is. He said it would be an unnecessary hardship to demolish the building and move it closer to the street and put the parking in the back. He said the revision to the zoning was more recent and seemed to be more applicable to future builds. He said the area was zoned Industrial but was on the edge of the zone. In terms of the neighborhood, he said it is obviously more or less industrial than perhaps other places where this type of use would be allowed. He said the proposed use is a reasonable one and noted that it has been a reasonable use and should continue to be one.

Mr. Rheume said he agreed with almost everything Vice-Chair Mattson said. He said that Vice-Chair Mattson thought there was something de minimis about the requests, but Mr. Rheume thought they were substantial but justified. He said the fact that the property is right up to the Gateway Zone would allow most of the uses and it is uniquely situated in the Industrial Zone because the long side of the property is up against the Gateway District. He said the shape and configuration of the lot contributes to the idea that it is not perfectly suited for the Industrial Zone and gives it leeway for being on the edge right up against the Gateway District. He said the Board was not inventing something new but saying that these were things that would essentially be allowed with special exceptions and works in favor of the applicant. He said the outdoor use is an expansion of what was previously reviewed and granted by the Board but he thought it would ultimately be very limited. He said what the applicant was asking for is outdoor dining on a small portion of the property and the physical constraints of the property would prevent further expansion. He said the application still had to go through a few more land board reviews, but for the purposes of the Board he thought the application met the five criteria. Mr. Rossi said he appreciated the public who made their statements and tapped into some deep emotions, which the Board did not see often in a positive sense. Vice-Chair Mattson said he accepted Mr. Rheume's comments.

The motion passed by a vote of 4-1, with Chair Margeson voting in opposition.

II. ADJOURNMENT

The meeting adjourned at 8:10 p.m.

Submitted,
Joann Breault

BOA Meeting Minutes Taker