

**REGULAR MEETING
BOARD OF ADJUSTMENT
PORTSMOUTH, NEW HAMPSHIRE
CITY COUNCIL CHAMBERS**

7:00 P.M.

October 16, 2001

MEMBERS PRESENT: Chairman, Jack Blalock, Vice-Chairman Charles LeBlanc; James Horrigan; Alain Jousse' Bob Marchewka; Chris Rogers; Nate Holloway; and, alternates Ginny Weeks and David Witham

MEMBERS EXCUSED:

ALSO PRESENT: Lucy Tillman, Planner I

I. APPROVAL OF MINUTES

Mr. Horrigan stated that on Page 11 of the meeting of September 18, 2001, it was reflected that he spoke to his motion and also spoke to the second. It should have reflected that Mr. Jousse seconded the motion and addressed his motion.

Vice-Chairman LeBlanc stated that on Page 18 of the same meeting, the second bullet under the Decision of the Board reflected the following:

?? that there no vehicle parts stored outside; and should have reflected
?? that there **be** no vehicle parts stored outside;

Mr. Rogers made a motion to accept the minutes as amended; Vice-Chairman LeBlanc seconded and were approved unanimously with a 7 – 0 vote.

Let the record reflect these changes have been made

Ms. Weeks stated that on Page 5 of the first paragraph of the excerpt of minutes from the meeting on August 21, 2001 on 10 State Street, she was quoted as saying the footprint and waterview had been decreased. She stated that comment should have reflected that she agreed the waterview had been decreased; however, the footprint of the building has increased slightly.

Vice-LeBlanc made a motion to approve the minutes with the above correction; Mr. Rogers seconded and all agreed with a 7 – 0 vote.

Let the record reflect that this change has been made.

II. OLD BUSINESS

A) Request for a Rehearing for property owned by 10 State Street, LLC, located on 10 State Street, requested by Michael B. King, Esquire. Said property is shown on Assessor Plan 105 as Lot 004 and lies within the Central Business B and Historic A districts.

Mr. Rogers made a motion to deny the Request for Rehearing; Vice-Chairman LeBlanc seconded. Mr. Rogers stated that after looking over the minutes from the August 21, 2001 meeting, there was no error made in the Board's deliberations and added there is no new evidence being presented that would warrant a rehearing. Mr. Rogers stated that item #17 in the request indicated that not enough time was given for the applicant to present his petition when over one hour was given to the applicant. The Board's Rules and Regulations allot 10 minutes per speaker; therefore, sufficient time was given to the applicant to present his application and added that item #17 is unfounded.

The motion to deny passed with a 6 – 1 vote with Ms. Weeks voting in the negative.

B) Request to Appeal the Decision of the Historic District Commission for property owned by Cate Irvine, located on 300 Court Street, requested by Bernard W. Pelech, Esquire. Said property is shown on Assessor Plan 108 as Lot 012 and lies within the Mixed Residential Office and Historic A districts.

Mr. Jousse made a motion to deny the Appeal; Mr. Holloway seconded for discussion. Mr. Jousse stated that he was troubled that this Board approved a 24' x 10' porch and the Historic District Commission was presented with a 34' x 10' porch which was not approved by this Board; therefore, this request should be denied.

Ms. Tillman, a Planner, stated that was correct that a 10' x 34' porch was brought up at the HDC meeting; however, the architect for the project made an error on the plans and wrote that the porch would be 34' rather than 24' and was an error on his part.

Mr. Jousse stated there were no errors on the Commission's part and concluded that he will support their decision. Mr. Holloway stated he seconded for discussion only.

Chairman Blalock stated he agreed with Mr. Jousse and added that after reviewing the minutes from the Historic District Commission's meeting, they did follow their procedures and rules. Several of the Historic District members expressed concern on the HDC matters and quoted Vice-Chairman Adams as indicating there was no usefulness of this porch to the HDC area and the design is out of scale for the building. He added that to allow this porch will create an impact on the area and is not in keeping with the area. Whether this Board agrees or not is irrelevant. There is nothing in the Appeal that would sway me to grant this Appeal.

The motion to deny passed unanimously with a 7 – 0 vote.

III. PUBLIC HEARINGS

1) Petition of Florence J. and Cindi L. Rohwer, owners, for property located at 559 Maplewood Avenue wherein a Variance from Article III, Section 10-302(A) is requested to allow a second dwelling unit to be located in a new addition on a 9,600 s.f. lot where a minimum lot size of 15,000 s.f. would be required for two dwelling units. Said property is shown on Assessor Plan 209 as Lot 012 and lies within the General Residence A district.

SPEAKING IN FAVOR OF THE PETITION

Ms. Cindi Rohwer, an owner of the property, stated she would like to add an addition to allow for a second dwelling unit for her mother to be located to the side and rear of the dwelling. This addition will not encroach any further on the existing setbacks. Ms. Rohwer stated there are many apartments in the neighborhood; therefore, there will be no diminution to surrounding property values. The total square footage for the lot is 9,600 s.f. and the Ordinance requires 15,000 s.f. to allow for two dwellings on one lot. This requirement creates a hardship because it will not allow for reasonable use of the property.

Ms. Rohwer presented a petition signed by 30 abutters in the area who are in support of the request; therefore, there will be no diminution to surrounding property values.

Ms. Weeks asked if there would be separate utilities. Ms. Rohwer replied that the electricity will not be separate; however, the gas meter will be separate.

Vice-Chairman LeBlanc asked if the parking would be located to the left of the dwelling? Ms. Rohwer replied that was correct.

Mr. Holloway stated the floor plan indicates there will be an office in the dwelling. Ms. Rohwer replied that the office is for her mother who does genealogy.

There being no further speakers, the Public Hearing was closed.

DECISION OF THE BOARD

Mr. Rogers made a motion to grant the application as presented and advertised; Mr. Marchewka seconded. Mr. Rogers stated this is a minimal request and the addition will not encroach any further on the existing setbacks. There are many multi-family properties in the area and added the request is minimal. Mr. Marchewka stated he agreed and added there is adequate room for the addition and it is in keeping with the surrounding neighborhood and abutting property owners. There will be no diminution in property values to any abutters.

Chairman Blalock stated he agreed and added that he feels the three-part hardship test has been met and the petition signed by abutters who are not objection to the application is always a good sign.

The motion to grant passed unanimously with a 7 – 0 vote.

2) Petition of C-Chase Properties, LLC, owner, d/b/a Seacoast Mazda for property located at 180 Spaulding Turnpike wherein a Variance from Article IX, Section 10-908(Table 14) is requested to allow the following: a) 105 s.f. free-standing externally lit sign 29'10" high where 20' is the maximum height allowed creating a 0' front setback where 20' is the minimum allowed; and, b) a 48 s.f. free-standing sign externally lit creating a 0' front setback where 20' is the minimum allowed. Said property is shown on Assessor Plan 236 as Lot 039 and lies within the General Business district.

SPEAKING IN FAVOR OF THE PETITION

Mr. Doug Miles, the owner of the property, stated he was requesting that two signs be allowed, both with 0' front setbacks where 20' is requested. The existing signs are 40 years old and need to be replaced with signs that are modern. Both signs will be aligned and be approximately 100' apart. The VW sign will be 20' high; however, the Mazda sign will be 29'10" high and will be located up against the fence and visible to motorists driving up the Turnpike.

Vice-Chairman LeBlanc stated the location of the VW sign will remain essentially the same. Mr. Miles replied "yes" and the height of the sign will be 20' from grade level to the top. Vice-Chairman LeBlanc asked how tall the Mazda sign would be? Mr. Miles replied 29'10" and will be up against the fence as well as the VW sign. The current Mazda sign is 35' high. Vice-Chairman LeBlanc asked if there would be any visual problems for motorists driving on the Spaulding Turnpike? Mr. Miles replied there would be none.

Ms. Weeks asked why both signs could not be located on one pole rather than create two signs that will interfere with each other? Mr. Miles replied that the car companies dictate what signage can be allowed.

There was much discussion on the height of the signs as well as the square footage. Ms. Tillman stated the Inspection Department has determined that the square footage is not an issue; therefore, the height and the setbacks are the issues that this Board needs to consider.

Mr. Miles stated the advertisement reads externally lit signs; however, both signs are internally lit. Ms. Tillman replied that if the signs are going to be internally lit, then the application should be re-advertised.

Mr. Rogers made a motion to table the application until it can be advertised properly; Vice-Chairman LeBlanc seconded.

Mr. Horrigan stated he felt that that we should proceed with the application because he did not feel it would make a difference.

Vice-Chairman LeBlanc stated he does not approve of tabling applications because it puts it off; however, where this is not advertised correctly, it would be a much cleaner and neater to do the whole thing at once rather than piece meal.

The motion to table to the November 20, 2001 meeting passed with a 5 – 2 vote with Mr. Horrigan and Mr. Blalock voting in the negative.

3) Petition of John and Barbara Gregg, owners for property located at 69 Hunking Avenue wherein the following are requested for a 10' x 14' two story addition to the left side of the existing dwelling: 1) a Variance from Article III, Section 10-302(A) to allow a) a 1' rear yard where 25' is the minimum required and b) 47.3% building coverage where 30% is the maximum allowed; and, 2) a Variance from Article IV, Section 10-401(A)(2)(c) to allow a non-conforming building to be enlarged in a manner that does not conform to the Ordinance. Said property is shown on Assessor Plan 103 as Lot 040 and lies within the General Residence B and Historic A districts.

SPEAKING IN FAVOR OF THE PETITION

Ms. Anne Whitney, the architect for the project and representing the owners, presented a blown up plan that the Board members had in their packets of the proposal. There is a small ell that will be removed and this will increase the footprint of the dwelling. The addition will be two story 10' x 14' in size and be located on the left side of the house. There will be a net gain of 68 s.f. or an increase of 3.8% for added living space. She added that all the abutters have been contacted about the project and they have no objection.

Ms. Whitney stated they have had a work session with the Historic District Commission and received a very favorable response.

There being no further speakers, the Public Hearing was closed.

DECISION OF THE BOARD

Mr. Rogers made a motion to grant the application as presented and advertised; Mr. Marchewka seconded. Mr. Rogers stated this is a good use for the property. There is not much you can do with the property without removing the existing ell. Mr. Marchewka agreed and added the majority of the addition will not have any impact to the surrounding properties and will increase the surrounding property values in the area.

The motion passed unanimously with a 7 – 0 vote.

4) Petition of Joker's Realty One, LLC, owner, for property located at 2460A Lafayette Road wherein a Variance from Article IX, Section 10-10-903 is requested to allow an electronic 100 s.f. reader board sign 18' high where flashing signals/reader boards are not allowed. Said property is shown on Assessor Plan 285 as Lot 016-1 and lies within the General Business district.

SPEAKING IN FAVOR OF THE PETITION

Mr. James Sullivan of Barlo Signs and representing Joker's, stated we are requesting an electronic reader board sign with a 15 second time limit; however, we would like a 3 second time limit because of the nature of Joker's business which is an entertainment entity. This sign will advertise what entertainment is going on as well as functions. Mr. Sullivan stated that he did not consider the sign to be flashing and that it is a controlled situation. There will be no traffic safety hazard created.

Mr. Jousse stated there is a car dealership on Lafayette Road that has a flashing sign and asked what the sequence was. Mr. Sullivan replied 5 seconds.

Vice-Chairman LeBlanc asked where the sign would be located on the property? Mr. Sullivan replied where the existing sign is.

Mr. Rogers stated that Mr. Sullivan has indicated that a 30-second time limit was approved by the Inspection Department. Ms. Tillman stated she was not aware of this and the Ordinance clearly does not allow it under 10-903 and anything that moves or flashes is prohibited. She

added that the sign at the car dealership has been an on going problem and does not know where they currently stand in the resolution process and asked that it be referred to Roger Clum, the Assistant Building Inspector who regulates signs.

Ms. Weeks asked if the current zoning was in place when the business was opened. Ms. Tillman replied the current language was in the 1982 Ordinance.

Vice-Chairman LeBlanc asked why a flashing sign was needed? Mr. Sullivan replied that it was his opinion that the requested sign is not flashing. There are many events that go on at any given day.

An owner from Joker's stated that many people do not understand what Joker's is all about. We have difficulty explaining to the general public what we are all about and 30-35% of the customers on a given day are new; therefore, we are trying to educate the public. We feel the reader board will help us with our efforts as well as advertise for help that is very much needed. Special groups such as Boy Scouts or Girl Scouts would be advertised also.

Mr. Sullivan stated the message on the board does not move across the screen, but fade in and out.

Mr. Bill Smiley, President of the New Hampshire Sign Association, stated that he has also worked for the company that manufactures the electronic signs. A sign was granted to the Port City Motor Inn in regard to a 15 second electronic reader board. The Board referred this application back to the Building Inspector who made a decision based on the travel and speed on the road that he felt a 15 second sequence was a reasonable time limit to change the message. There has been somewhat of a precedent set. There is a car dealership that has an electronic sign that changes frequently as well as another car dealership located nearby. He stated that the proposed sign is a small LED pistol that fades in and out and there are no moving parts.

Mr. Smiley then addressed other electronic signs that have been installed around the country in major cities. The proposed sign is within code and will be in the same location as the existing sign.

Mr. Rogers stated that this Board does not set a precedent, we deal with each applicant as they come to a meeting. The Port sign was one individual application and the reason he supported the application was because the business is located on a divided highway. There is no divided highway where the proposed sign is to be located. Mr. Rogers asked if a survey was done regarding pedestrians crossing the street. Mr. Smiley stated the proposed sign is the same as an internally lit sign, the only change is that the message fades in and out. The sign is located where signalization has been erected; therefore, he feels pedestrian traffic is not an issue.

Mr. Horrigan stated Port City came in for setback relief and the electronic part of it was brought up. The Board was under the impression that the sign would change occasionally, but it was not the primary issue.

Ms. Weeks asked if the sign moved. Mr. Smiley replied there were no moving parts, the message fades in and out only.

Mr. Rogers asked if the sign could be adjustable such as change the sequence timing at a later date to run messages across it or flashes on or off. Mr. Smiley replied you could do anything you wanted to.

Mr. Smiley stated that it may not be in the company's best interest to request a Variance, but an Appeal so that a hardship issue does not have to be addressed. Chairman Blalock stated that this particular application can be withdrawn at this point by the owner of the property or the applicant. Ms. Tillman advised that the petition was in the middle of a public hearing; therefore, that it could be tabled at this point and is up to the Board to decide.

Mr. Rogers asked if the application is tabled to next month, could an Administrative Appeal be applied for at the same time. Chairman Blalock stated this could be done. Ms. Tillman stated if this application was tabled, it would be under Old Business next month. If there is an Administrative Appeal, that would be advertised and would be under Public Hearings for next month.

Mr. Smiley stated the big confusion is the letter from the Building Inspector to Port Motor Inn.

Mr. Loomis, an advertising sales rep hired by Barlo Signs, stated that Joker's is unable to reach customers in California who visit New England during the summer months. The current sign is not adequate to tell people what Joker's currently do at their location. He feels that to allow the electronic sign will increase revenue so that there will be more business at the location. Joker's was hoping to have this sign in by Thanksgiving because it is a busy time and if the application is tabled for two months, it would be difficult to reach customers.

There being no further speakers, the Public Hearing was closed.

DECISION OF THE BOARD

Ms. Holloway made a motion that the application be denied; Mr. Marchewka seconded. Mr. Holloway stated that all the conversations given this evening were not relevant to the proposed sign. He added that the speed on the sign is what causes the light to flash; therefore, this is still a flashing sign. This sign is not allowed and asked the Planning Department to look into the Automobile Car dealership. Mr. Marchewka stated he agreed and added that he did not see a real hardship presented and added that he was sure that every business on Route 1 would like to have a sign where they can advertise on a regular basis. The flashing issue is a gray area and is something that needs to be determined by the Building Inspector. There should be some parameters for this type of sign. Any sign that changes 20 times per minute has the potential to distract motorists especially on busy Route 1. Mr. Marchewka stated he did not see how this request could be granted as presented.

Mr. Jousse stated he will support the motion and added that he drives by the car dealership on Route 1 on a daily basis. He finds the reader signs extremely distracting for motorists. Where Joker's is located is somewhat hazardous during the daylight hours because of on-coming traffic coming from Constitution Avenue and in-coming traffic coming from the Shopping Center. This area is hazardous enough as it is without having to read a sign on the side of the road. We don't need to create another hazard.

The motion to deny passed unanimously with a 7 – 0 vote.

5) Petition of Joseph Arnstein, owner, applicant, for property located on Foch Avenue wherein a Variance from Article III, Section 10-302(A) is requested to construct a dwelling creating a front setback of 10' where 30' is the minimum allowed. Said property is shown on Assessor Plan 233 as Lot 144 and lies within the Single Residence B district.

This application was tabled until a Conditional Use Permit has been received from the Planning Department

IV. ADJOURNMENT

There being no further business to come before the Board, the Board acted unanimously to adjourn the meeting and to meet on November 20, 2001 for the next scheduled meeting in the City Council Chambers at 7:00 p.m..

Respectfully submitted,

Joan M. Long
Secretary

/jml