

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

7:00 P.M.

**November 20, 2001
Reconvened on
November 27, 2001**

MEMBERS PRESENT: Chairman, Jack Blalock, Vice-Chairman Charles LeBlanc; James Horrigan; Alain Jousse; Bob Marchewka; Nate Holloway and alternate, David Witham

MEMBERS EXCUSED: Chris Rogers; and alternate, Ginny Weeks

ALSO PRESENT: Lucy Tillman, Planner I

I. PUBLIC HEARINGS

13) Petition of Olde Port Development Group, owner, for property located at 67-69 Cabot Street wherein a Variance from Article III, Section 10-302(A) is requested to allow a 20'6" x 30'4" garage and two stories of living space above to be built in the location of the existing garage with: a) a 3'2" left side yard and a 9'7" right side yard where 10' is required for each, b) a 3' rear yard where 20' is required, c) 43.4% of building coverage where 35% is the maximum allowed; and, d) 7.6±% of open space where 20% is the minimum required. Said property is shown on Assessor Plan 136 as Lot 35 and lies within the Apartment district.

SPEAKING IN FAVOR OF THE PETITION

Mr. Eric Bessemer, the developer, stated that he just purchased the property recently. The previous owner of the property was approved for a Variance to move one apartment to the carriage house. We are proposing to do the same thing as the previous owner; however, when contacting the Building Inspector, he stated it would be better to remove the garage building and rebuild; therefore, a Variance is required again. He added the deck on the side will be removed to provide an additional parking space and the setbacks will remain the same. There will be four apartments in the main house and one in the carriage house.

Vice-Chairman LeBlanc asked what was the square footage of the deck? Mr. Bessemer replied the deck is approximately 16' x 16'. We are also planning a dormer on the back.

SPEAKING IN OPPOSITION TO THE PETITION

Mr. John Mayer, an abutter at 8 Cabot Street, stated he does not fully understand what the scope of the project is. To add 1-1/2 stories to the garage is not within keeping with the area and will be a dramatic change for the neighborhood.

Chairman Blalock stated the height of the garage is within what the Ordinance allows.

Mr. Mayer stated there are concerns with water run off since the driveway is asphalt and will exacerbate the water run off problem. He feels the garage will be too tall.

An abutter at 74 Cabot Street asked what the height limitations are for this area? Ms. Tillman from the Planning Department replied 35'. There was discussion on the parking issue. Ms. Tillman replied that the applicant submitted a parking plan showing that they had eight spaces and the old parking plan shows seven spaces.

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

DECISION OF THE BOARD

Vice-Chairman LeBlanc made a motion to grant the application as presented and advertised with the stipulation that before a Certificate of Occupancy is issued that the apartments in the main building be reduced by one unit; Mr. Holloway seconded. Vice-Chairman LeBlanc stated this application is similar to what was granted in May of this year and by adding another parking space will reduce parking on the street. Mr. Holloway agreed and had nothing further to add.

Mr. Witham stated the carriage house will no longer be a carriage house. It will be a 3-story house and is very overpowering and out of scale to surrounding properties in the neighborhood. Mr. Witham stated he failed to see a hardship and cannot vote for the motion.

Mr. Horrigan stated he agreed with Mr. Witham and added that it is out of scale with the neighborhood and also feels there is no hardship.

Chairman Blalock stated he will support the motion. The building is in need of renovations and added that since the Board granted this application previously, the applicant has the right to move the fifth dwelling from the main building and the height is the same.

The motion to grant with a stipulation that before a Certificate of Occupancy is issued, that the apartments in the main building be reduced by one unit passed with a 5 – 2 vote with Mr. Horrigan and Mr. Witham voting in the negative.

14) Petition of Sean Caughran, owner, for property located at 552 State Street wherein a Variance from Article IV, Section 10-402(B) is requested to allow a 5' x 11' addition to an existing shed with a 1' right side yard where 10' is the minimum required. Said property is shown on Assessor Plan 127 as Lot 19 and lies within the Mixed Residential Office and Historic A districts.

SPEAKING IN FAVOR OF THE PETITION

Mr. Caughran, the owner of the property, stated he wanted to place an addition onto his existing shed creating a 1' right side yard. He added that the basement in the house is wet and the attic is finished. We need a storage area that is dry.

Vice-Chairman LeBlanc stated the existing shed does not appear to be 5' from the fence. Mr. Caughran replied that it is 5'.

Mr. Horrigan asked what was between the shed? Mr. Caughran replied there was a play area for his children.

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

DECISION OF THE BOARD

Mr. Horrigan made a motion to grant the application as advertised and presented; Vice-Chairman LeBlanc seconded. Mr. Horrigan stated the request is for minimal relief. The extension on the shed will be shielded from the structure and added that because of the location of the fence, there is really no other place to locate the addition. Vice-Chairman LeBlanc stated he agreed and added the size of the addition is minor. It would not serve any good to deny the request.

Mr. Jousse stated the hardship is in the width of the property being 40' wide. To move the shed to another location would not benefit the applicant.

Chairman Blalock stated he agreed and added the hardship is because of the configuration of the lot.

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

15) Petition of Jan and Teresa Marie Vanderlinde, owners, Barbara Trimble and Robert Chaffee, applicants, for property located at 32 Miller Avenue wherein the following are requested: 1) a Special Exception as allowed in Article II, Section 10-207(8) to allow the single family dwelling to be converted to a Bed and Breakfast with four rentable rooms, and 2) a Variance from Article XII, Section 10-1201(A)(2) to allow 4 parking spaces to be 18' in length where 19' is the minimum length required and the travel way to be 20' in width where 24' is the minimum width required. Said property is shown on Assessor Plan 136 as Lot 18 and lies within the Mixed Residential Office district.

SPEAKING IN FAVOR OF THE PETITION

Mr. Robert Chaffee, the applicant, stated he was under agreement to purchase the property and would like to convert the property back to a bed and breakfast. During the years from 1991 to 1997, it was a bed and breakfast and then after that it was converted back to a single family home. Parking will remain in the same.

Vice-Chairman LeBlanc asked if a sign would be erected. Mr. Chaffee replied not at this time; however, we will come back for additional approval if we decide that a sign is needed.

Ms. Terry Vanderlinde, the owner of the property, stated the property had been operating successfully as a bed and breakfast in the past. All the neighbors have supported the application to convert it back into a bed and breakfast and there was never any noise created by this use. She asked that the Board look favorably on the request.

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

DECISION OF THE BOARD

Mr. Horrigan made a motion to grant the application as presented and advertised; Mr. Marchewka seconded. Mr. Horrigan stated the parking has proven to be functional in the past and sees no good purpose served to deny the request. All the criteria has been met to grant the

Special Exception for a bed and breakfast; therefore, we are obliged to grant the request. Mr. Marchewka agreed and added the property was used as a bed and breakfast in the past with no problems and the current proposal is less intense.

Chairman Blalock stated he agreed and added the criteria has been met and without the Variance does not do any good. He stated that minimal relief is being requested.

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

16) Petition of John Iafolla Co., Inc., owner, Christopher Bothwell, d/b/a AutoMotion, applicant, for property located off Banfield Road wherein a Variance from Article II, Section 10-209(35) is requested to allow an 8' x 28' office trailer (temporary structure) to be placed within the previously approved outdoor storage area in a district where such use is only allowed by Special Exception for up to 180 days. Said property is shown on Assessor Plan 254 as Lot 3 and lies within the Industrial district.

SPEAKING IN FAVOR OF THE PETITION

Mr. Christopher Bothwell, the applicant, stated he wanted to have an office trailer on the property that will be staffed Monday through Friday 9:00 a.m. to 5:00 p.m.. This is required by the Portsmouth Police for legally impounding vehicles. He stated there is also a security issue where some of vehicles on the property have been broken into or tampered with. The trailer would also house a dispatcher and have telephones, computers, and electricity.

Chairman Blalock asked how long the temporary trailer would on the location? Mr. Bothwell replied at least until next summer. He added that he in the process of purchasing the property and would erect a permanent building for this purpose at that time.

Mr. Witham asked if the trailer would be within the fenced area? Mr. Bothwell replied the trailer would be located just inside the gates.

Mr. Marchewka clarified that what we are voting on is the length of time to allow the trailer.

Mr. Horrigan asked that the trailer be described. Mr. Bothwell replied it is 8' x 28' in size, gray and white with windows.

Mr. Holloway asked if there would be a sign. Mr. Bothwell replied not at this time; however, in the future he will return for a sign application.

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

DECISION OF THE BOARD

Mr. Holloway made a motion to approve the application as presented and advertised with the stipulation the trailer be allowed for 18 months; Mr. Marchewka seconded. Mr. Holloway stated he could see no problem with this property and minimal relief is being requested. This trailer is something the applicant needs since there has been vandalism on the property. Mr. Marchewka stated he agreed and added that the trailer is required by the Portsmouth Police to allow the use and the trailer is similar to a construction trailer.

The motion to grant with the above stipulation passed with a 7 – 0 vote.

17) Petition of Bethel Assembly of God, owner, for property located at 200 Chase Drive wherein a Variance from Article IX, Section 10-908 Table 14 is requested to allow 12' x 6' internally lit free-standing sign 11' in height and 3' from the property where institutional signs shall not be greater than 16 sf, 3' high and at least 15' from property lines. Said property is shown on Assessor Plan 210 as Lot 2 and lies within the Single Residence B district.

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernard Pelech, representing the owner and applicant, stated there is a 40' wide landscaped area between Market Street Extension and the property line. We are proposing to erect a 12' x 6' sign being 11' high and located 3' from the property line on Market Street. However, there is a 3' high chain link fence and the sign will be erected 5' above ground level in order for it to be visible above the fence.

Attorney Pelech stated that all the criteria has been met to grant the Variance adding there will be no diminution in values to the surrounding property values since the applicant has spoken with all the his direct abutters and they are in favor of the application. The abutters have signed a petition indicating this and he presented it to the Board to review. To grant the Variance will not be contrary to the public interest because it will allow for easier identification of the Church as well as notify the public about the House of Worship, special events and the listing of Sunday School classes.

Attorney Pelech stated to grant the request would be within the spirit and intent of the Ordinance because there is a 40' right-of-way that is landscaped; therefore, the sign will not be too close to surrounding properties. If the sign was erected to be within 3' as required by the Ordinance, it would not be visible because of the chain link fence. Attorney Pelech stated that denial of the Variance would result in an unnecessary hardship if the applicant had to adhere to the 3' height for the sign because it would not be visible and therefore, useless. Substantial justice will be done to grant the Variance because there are no public rights that would be affected by the erection of the sign.

Attorney Pelech stated that substantial justice would be done to grant the Variance because the hardship would be created to the owner. To grant the request, the Church will be able to provide notice to their congregation as well as the general public of the hours of service or any up coming events.

Attorney Pelech asked that the Board look favorably on the request.

Mr. Holloway asked if the proposed sign would be double sided and internally lit. Attorney Pelech replied that was correct.

Chairman Blalock asked if the banner on the fence would be removed. Attorney Pelech replied that it would be removed if the application is granted.

Vice-Chairman LeBlanc stated this sign will have a reader board that will not move in any way. Attorney Pelech replied that was correct.

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

DECISION OF THE BOARD

Mr. Holloway made a motion to grant as presented and advertised; Vice-Chairman LeBlanc seconded. Mr. Holloway stated this request is minor because the will be located away from the street. Vice-Chairman LeBlanc stated the hardship in this case is that the sign has to be 11' high because of the location of the chain link fence; therefore, this request can be granted.

Chairman Blalock stated that when he first looked at the application, he felt there was a lot of relief being requested. To have a sign that would be allowed by the Ordinance would be needless and agreed that this request can be granted.

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

18) Petition of Eric and Martha Stone, owners, for property located at 824-826 State Street wherein a Variance from Article XII, Section 10-1204 Table 15 is requested to allow a duplex to be converted into three dwelling units with no parking being provided where 5 parking spaces are required. Said property is shown on Assessor Plan 145 as Lot 84 and lies within the Apartment district.

SPEAKING IN FAVOR OF THE PETITION

Ms. Martha Stone, an owner of the property, stated she would like to correct the City records that the property has had three dwelling units for the past 22 years. She stated they purchased the property in 1996 as a three family home and added that the Board members should have assessor records; a building permit issued in 1990 and several other documents in their packets that illustrate the building as having two units or three units at different times during this time period. A Variance is required for parking relief since there is no available on-site parking.

Ms. Stone stated this came to light just recently because we are in the process of selling the property. We have talked with all the abutters and they have no objection to the request. She presented a letter received from J. Tyler Rohrer, an abutter, written to Shanley Real Estate, that indicated the property is a three unit apartment building and was in favor of the petition.

Vice-Chairman LeBlanc asked if the property was always used as a 3-family unit. Ms. Stone replied that was correct.

Chairman Blalock then read into the record a letter received from an abutter, Ann Pembroke located at 880 State Street in objection to the request. Ms. Stone stated that she felt this letter was written in objection because of the way the Legal Notice was written.

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

DECISION OF THE BOARD

Vice-Chairman LeBlanc made a motion to grant the application as advertised and presented; Mr. Holloway seconded. Vice-Chairman LeBlanc stated that since this property has been used

as a 3-unit apartment for sometime, it should remain that way. Mr. Holloway stated he agreed and had nothing further to add.

Mr. Witham stated he will support the motion because it has been a 3 unit family dwelling for many years. The parking issues will remain the same as it is now.

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

Let the record reflect that Mr. Robert Marchewka stepped down from the following application.

19) Petition of Robert and Jennifer Marchewka, owners, for property located at 327 Sagamore Avenue wherein a Variance from Article III, Section 10-302(A) is requested to allow a 24' x 28' garage with second floor living space with an 8' rear yard where 20' is the minimum required. Said property is shown on Assessor Plan 222 as Lot 27 and lies within the General Residence A district.

SPEAKING IN FAVOR OF THE PETITION

Mr. Robert Marchewka, the owner of the property, stated his home is a single family home on a corner lot. He stated he is proposing to enlarge his existing garage and add additional living space on the second floor creating an 8' rear yard setback where 20' is required. He is proposing to move the existing driveway from Sagamore Avenue to Verdum Avenue because it will be a safer egress and ingress.

Mr. Witham asked if the existing driveway would be removed and grassed in. Mr. Marchewka replied that this would be done later on.

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

DECISION OF THE BOARD

Mr. Horrigan made a motion to accept the application as advertised and presented. Vice-Chairman LeBlanc seconded. Mr. Horrigan stated he agrees with the petitioner that this request would be within the public interest to move the driveway to Verdum Avenue for a safer access. The petitioner is right that Sagamore Avenue is a very busy street and could create a safety hazard. To grant the 8' rear yard setback is not extending the nonconforming structure, it is minimal relief and can be granted. Vice-Chairman LeBlanc stated it is a safety issue to move the driveway; therefore, this request can be granted.

Mr. Jousse stated the rear setback is already 8' and this is just a continuation of making the garage wider. The relief is minimal and this application should be granted.

The motion to grant passed unanimously with a 6 – 0 vote.

Let the record reflect that Chairman Blalock stepped down from the following application.

20) Petition of Gordon Sorli, owner, Paul Sorli d/b/a Portsmouth Gas Light Co., applicant, for property located at 64 Market Street wherein a Variance from Article XIII, Section

10-1302(G) is requested to allow a six month extension concerning the expiration of an extension of approval granted to 30 November 01. Said property is shown on Assessor Plan 117 as Lot 35 and lies within the Central Business B and Historic A districts.

SPEAKING IN FAVOR OF THE PETITION

Attorney Jonathan Flagg, representing the owner and the applicant, stated that this petition is a little different because it has nothing to do with the substance of the Variance. This Variance was approved on December 2, 1999 as well as a one-year extension in November of 2000 bringing this to November of 2001. He feels that this is a procedural Variance from Article XIII, Section 10-1302(G) which provides for a one year extension. He briefly explained to the Board what has been going on for the past two years.

Attorney Flagg stated that Lisa DeStefano, the architect for the project has prepared a "time line" of what has been going on for the past year as well as what is being proposed for the upcoming year and presented it to the Board members to review. He stated that 64 Market Street directly abuts 78 Market Street that has an elevator on a common wall. However, in order to comply with life safety codes and the ADA requirements, it was attractive to his client because that common wall elevator would satisfy the life safety code. His client closed on 78 Market Street in September of 2000 and it was after this that a one year extension was granted. The next year we applied for the necessary approvals to continue on with this project.

The Building Permits were obtained in November of 2000 to connect the two buildings. In February and March of 2001, the Boca Building Code analysis was completed. In April and May, the Building Code Inspector made comments and the changes were made. In June and July of 2001, there was verification of the design and that took approximately two months to complete. In October of 2001, phase I was submitted and is on the inside of the building; phase II relates to the outside of the building and requires HDC approval as well as Site Review approval.

Attorney Flagg stated there was miscommunication between his client and the City because his client thought that if phase I was completed, it should satisfy the Building Permit requirement for one year; however, phase I and phase II would have to be completed within the one year time frame. He added that on November 14, 2001 there was an HDC work session and on December 5, 2001 we are on the HDC Agenda for final presentation.

Attorney Flagg added that in February of 2002, we are on the Agenda for TAC review, and Site Review in March 2002. We feel that we could obtain a Building Permit in April of 2002.

Attorney Flagg stated that this is a reasonable use of the property and will not harm any public or private right. He then addressed the criteria adding there will be no diminution to surrounding property values and will not be contrary to the spirit and intent of the Ordinance. To grant the request would be within the public interest and will result in substantial justice. He added that Ms. DeStefano's summary explains that the applicant has been working very hard over the last year to accomplish what needs to be done and we are right on the cusp of getting this completed. We are not asking for a one year extension but a six month extension of time to complete the project.

Mr. Horrigan stated that the Special Exception was denied back in 1997. Attorney Flagg stated that was correct and by stipulation of Superior Court in November 1999 it was approved.

Acting Chairman LeBlanc stated he was in receipt of a Memo received from Donald Coker of the Downtown Neighborhood Residence Association where opposition is voiced to the whole project. This particular project has been going on for a long time for almost five years and the Neighborhood Association feels that to grant an extension would not be in the best interest for the City. We feel that this was a self-inflicted need and was the only viable option for the owner. It is clear the owner waited until the last minute to submit plans knowing the needed steps in the process of securing a Building Permit. Mr. Coker has indicated that the applicant has received a one year extension and the Ordinance does indicate that no other extension may be granted.

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

DECISION OF THE BOARD

Mr. Marchewka made a motion that the request be granted as advertised and presented; Mr. Witham seconded. Mr. Marchewka stated that this is obviously a sensitive project in downtown as well as a very complicated project. It is obvious that the project is in process and feels that the "timeline" prepared by Ms. DeStefano was very helpful to show what has been going on. Mr. Marchewka stated he would feel differently about this request if nothing had been done and no progress made; however, the fact that it is moving along in a positive direction, a project of this nature can be slowed down by many things. He feels that a six month extension rather than a year extension is positive and shows that there is an on-going track to get it done. He added for his above reasons, this request can be granted. Mr. Witham stated he agreed with Mr. Marchewka and added the applicant and the owner have shown due diligence in the process as indicated by the "time line". This project has been approached as a two phase project with phase I taking place within a time frame. The project is happening and moving along. Time is needed to meet with the numerous board approvals.. There will be no justice done to deny this request.

Mr. Horrigan stated that if the Variance is denied, will the project have to start over? Ms. Tillman confirmed that they will have to start all over.

Mr. Jousse stated he will not support the motion because the petition is for 64 Market Street and the "time table" does include 78 Market Street. On the original application, nothing was mentioned about 78 Market Street. At the end of this month it will be two years that the project was approved and according to Article XIII, Section 10-1302(G), the last sentence indicates that "no other extensions maybe requested; therefore, he feels that the request cannot be granted on this Variance that was approved two years ago.

Mr. Horrigan stated he agreed with Mr. Jousse and the Ordinance is very clear cut that no additional extensions will be granted. He is concerned that the application is old and added he feels bad for the petitioner that so many Board approvals were needed and at some point, the process should start over since he feels it has become stale. It has been five years since the project originally started and circumstances have changed and there is no give in with Article XIII, Section 10-1302(G).

Mr. Marchewka asked if this was the reason for the Variance request. Ms. Tillman replied that was correct. Mr. Marchewka stated this Board is here to decide if it is reasonable to grant this request and added he feels it is reasonable.

Mr. Horrigan stated he agreed and added that at some point the public becomes involved. The proposal has been around for five years and at some point we should start over.

Acting Chairman LeBlanc stated he will support the motion because of the complexity that has been shown on this project, we do have a right to grant extensions when there are extenuating circumstances and believes that this is what happened in this case.

The motion to grant as presented and advertised failed with a 3 – 3 vote with Mr. Jousse, Mr. Horrigan and Mr. Holloway voting in the negative; therefore the application was denied.

21) Petition of Paul Messier, owner, for property located at 97 Richards Avenue wherein a Variance from Article III, Section 10-302(A) is requested to allow a 20' x 24' three car garage with living space above having: a) a 0' left side yard where 10' is the minimum required, b) an 11' rear yard where 20' is the minimum required; and, c) 58.6% building coverage where 25% is the maximum allowed. Said property is shown on Assessor Plan 128 as Lot 9 and lies within the General Residence A district.

At the request of the owner, this application has been withdrawn.

22) Petition of Richards Avenue Group, LLC., owner, Me & Ollies d/b/a Max & Eli's General Store, applicant, for property located at 303 Richards Avenue wherein a Variance from Article II, Section 10-206 is requested to allow four tables to be added to the store for dining within the building in a district where restaurants are not allowed. Said property is shown on Assessor Plan 130 as Lot 56 and lies within the General Residence A district.

SPEAKING IN FAVOR OF THE PETITION

Mr. Steve Scott, representing the applicant, stated that he had received a letter from Roger Elkins as well as a letter from the neighborhood committee. The store has been at this location since 1904. It is a good old neighborhood store. We are proposing to add eight chairs and four tables because it has become a neighborhood meeting place for people to congregate and have coffee or a sandwich. Mr. Scott presented a petition with a 186 signatures indicating the neighborhood strongly supports this application.

Vice-Chairman LeBlanc asked how many people would be sitting in front of the store at any given time. Mr. Scott replied approximately 10.

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

DECISION OF THE BOARD

Mr. Marchewka made a motion to grant the application as presented and advertised; Vice-Chairman LeBlanc seconded. Mr. Marchewka stated this is a minimal request. This will not be an expansion of the store, but just for people to come and have coffee and sit down and talk. We are not looking at a full fledged restaurant, just 4 tables and 8 chairs being added to simply accommodate customers. There will be no affect on the neighborhood or to surrounding properties to grant the request. Vice-Chairman LeBlanc stated he agreed and added that to add 4 tables and 8 chairs does not constitute a restaurant. It would serve no benefit at large to deny

this request. He added that he would like to see this added as a stipulation to the motion. The maker of the motion agreed to this stipulation.

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

Let the record reflect that Mr. Marchewka stepped down from the following application.

23) Petition of Wayne Semprini, owner, for property located at 3510 Lafayette Road wherein a Special Exception as allowed in Article IV, Section 10-401(A)(1)(d) is requested to allow the existing building previously approved as a day care center to be used for retail sales in a district where retail sales are not allowed. Said property is shown on Assessor Plan 297 as Lot 8 and lies within the Single Residence A district.

SPEAKING IN FAVOR OF THE PETITION

Attorney Peter Loughlin, representing the owner and the applicant, stated the applicant Richard Valenta of Coastal Christmas would like to use the building for retail. This building is surrounded by Industrial uses. The building itself has been used commercially for 25 years. There have been several applications for this property that has been before the Board recently that were approved; however, they have not worked out. Attorney Loughlin stated that all the criteria has been met to grant the application and there will be no change to the site.

Mr. Jousse asked what kind of retail would be sold? Attorney Loughlin replied that it would be similar to the Christmas Dove in Barrington.

Attorney Loughlin stated that all the standards have been met to grant the Special Exception and added that one nonconforming use can be substituted for another use; therefore, this use will be less intense.

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

DECISION OF THE BOARD

Mr. Horrigan made a motion to grant as advertised and presented; Mr. Jousse seconded. Mr. Horrigan stated the site and the use will not be changed. There is no evidence that the standards for a Special Exception have been violated; therefore, this request can be granted. Mr. Jousse stated he agreed and had nothing further to add.

The motion to grant passed unanimously with a 6 – 0 vote.

24) Petition of Lafayette Partners of Michigan, LLC, owners, Margarita's Management Group, applicant, for property located at 775 Lafayette Road wherein the following are requested for a 2,064 sf addition to the existing restaurant: 1) a Variance from Article II, Section 10-208(20)(a) to allow the expansion on a lot that directly abuts a residential district, 2) a Variance from Article III, Section 10-304(C) to allow the expansion within 100' of property zoned residentially, 3) a Variance from Article III, Section 10-304(A) to allow: a) 12.6% open space where 20% is the minimum required, b) 19.5' left side yard where 30' is the minimum required; and, 4) a Variance from Article XII, Section 10-1204 Table 15 to allow 528

parking spaces to be provided where 596 parking spaces are required. Said property is shown on Assessor Plan 245 as Lot 1 and lies within the General Business district.

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernard Pelech, representing the owner and the applicant, stated that the Lafayette Plaza is the oldest plaza in the City of Portsmouth. The majority of uses in the plaza are retail with Margarita's being the only restaurant and pre-dates the 1995 Zoning Ordinance. The property is located within 30' of property zoned residential. He stated that in 1997 a Variance was granted to allow an outside patio with awning to be used as an extension of the existing indoor bar and directly abuts the residential area as well as a Variance to allow 528 parking spaces where 596 spaces are required.

Attorney Pelech stated that three small additions are being proposed to the existing restaurant. The first is a 10.5' x 40' addition to the front of the building; the second a 24.5' x 48.5' addition to the northerly façade; and the third a 19' x 24' addition to the rear of the building to be used for additional office space, kitchen space, a new entryway and waiting area and to expand the existing dining area. Because of the construction of the additions, we will lose 6 parking spaces causing 21 additional parking to be required. The outside of the restaurant will be stucco and will look like a Mexican restaurant. The largest tenants in the plaza are Pier I Imports and Ethan Allen furniture store. Margarita's is the only restaurant in the mall and they are high generators of parking. He added the parking lot is never full and during the Christmas season, parking spaces are blocked off to allow Rotary to sell Christmas trees. Since most of the tenants are 9:00 a.m. to 5:00 p.m. users and are usually closed when Margarita's goes into full swing, this request is reasonable. There have never been any issues where the Police have been called because of noise issues and added that the restaurant will abide by the requirements of Article V in the Ordinance. There will be no diminution to surrounding property values to allow this request.

Attorney Pelech feels the hardship in this case is because the restaurant is located within 200' of a residential area. The public will benefit because there will be more available seating provided and added the parking issue has been more than adequately addressed and very minimal. Substantial justice will be done if the Variance is granted and that no matter what the owners propose for the restaurant, a Variance would be required. Attorney Pelech stated that the hardship upon the owner greatly outweighs any benefit to the general public to deny the Variances requested.

Attorney Pelech stated that all the criteria has been met to grant the request and asked the Board to look favorably on the application.

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

DECISION OF THE BOARD

Mr. Horrigan made a motion to grant the application as advertised and presented; Vice-Chairman LeBlanc seconded. Mr. Horrigan stated this is a restaurant and it is clearly nonconforming. It is within reason to expect that the restaurant will expand. It is an existing business located close to a residential area. To deny the application would result in an unnecessary use of the property. There are no grounds to deny the application. Vice-Chairman LeBlanc stated he agreed and added that the amount of relief being sought is minimal and there

are good reasons to allow the application. There has been no police issues on the site and added the handicap access is required; therefore, this request can be granted.

Chairman Blalock stated it is a material expansion of a successful business and there have been no problems with police issues and added that all the criteria has been met. The application meets the requirements of the Simplex test.

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

II. ADJOURNMENT

There being no further business to come before the Board, the Board acted unanimously to adjourn the meeting and to meet at the next scheduled meeting on December 18, 2001 in the City Council Chambers at 7:00 p.m..

Respectfully submitted,

Joan M. Long
Secretary

/jml