

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

7:00 P.M.

JANUARY 15, 2002

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

MEMBERS EXCUSED: Bob Marchewka; Chris Rogers; and, Nate Holloway;

ALSO PRESENT: Lucy Tillman, Planner I

I. APPROVAL OF MINUTES

Mr. Horrigan made a motion to accept the minutes as amended from the meeting of December 18, 2001; Vice-Chairman LeBlanc seconded. The motion passed unanimously with a 5 – 0 vote.

Chairman Blalock advised applicants that since there was a short Board present this evening with only five voting members; four affirmative votes are needed to grant a Variance or Special Exception. A Request for a Rehearing requires a majority vote.

Chairman Blalock also advised the audience that #6 application for Thomas Vento on property located at 102 Marne Avenue had been withdrawn to the February 19, 2002 meeting to allow a full Board to be available.

II. OLD BUSINESS

A) Petition of James J. Reilley, owner, for property located at 21 Sanderling Way wherein the following are requested: 1) a Variance from Article II, Section 10-212(F)(2) to allow a gift packing business where products to be wrapped are delivered by tractor trailer truck and shipped out by UPS in a district where such use is not allowed, and 2) a Variance from Article XII, Section 10-1204 Table 15 to allow no parking to be provided for the business where 1 parking space is required for the business. Said property is shown on Assessor Plan 217 as Lot 2-1823 and lies within the OR/MV district. **This application was re-tabled at the December 18, 2001 meeting to the January 15, 2002 meeting.**

Vice-Chairman LeBlanc made a motion to take the application off the table; Mr. Jousse seconded and all approved with a 5 – 0 vote.

SPEAKING IN FAVOR OF THE PETITION

Mr. Reilley, the owner of the property, stated he up-rooted his family from New Jersey to move to New Hampshire and has lived at the property for the past two years. He added that he is a retired Army officer and has difficulty making ends meet. The gift packing business supplements his income and prospered for the past two years in New Jersey prior to moving to New Hampshire. The UPS truck makes a stop at his home once a month for 10 – 15

minutes to unload and place the product in his cellar; however his neighbor did observe that during one of the deliveries, he carried the boxes to the rear of his home and entered the cellar rather than through the front of the house. His neighbor proceeded to call the Zoning Officer to make a complaint.

Mr. Reilley presented letters signed by all his abutters with the exception of Mr. Torres, the abutter who originally made the complaint, stating they had no objection to the business and some neighbors knew nothing of it. This business is vital to the means of his family and reiterated that he needs this business for extra income. He asked that the Board look favorably on the petition.

Mr. Reilley stated that approximately once every three months a shipment of cardboard boxes is delivered so that the gifts can be re-boxed, wrapped up and shipped out.

SPEAKING IN OPPOSITION TO THE PETITION

Ms. Linda Panori, representing the tenants at Osprey Landing, stated she was not against the business; however, she is opposed to truck traffic being in the neighborhood and has fought long and hard to make sure there would not be any truck traffic. The streets in the area are narrow and when these large trucks are in the neighborhood, they have a hard time to maneuver around. She stated that if a smaller truck could be used and they were assured that there would not be any large trucks, she would have no opposition. Ms. Panori stated that if this application is granted it will open Pandora's Box for other tractor-trailer trucks to come into the neighborhood.

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

DECISION OF THE BOARD

Vice-Chairman LeBlanc made a motion to deny the application as presented; Mr. Horrigan seconded. Vice-Chairman LeBlanc stated he agreed with Ms. Panori's comments that a home business is not a bad thing as long as it does not infringe on the neighborhood. There has been no hardship shown; therefore, the petition should be denied. Mr. Horrigan stated he agreed and added that hardship as we define it, has not been established. There is nothing that indicates that the property cannot be used in a reasonable fashion and added that he is reluctant to allow a small wedge in this neighborhood.

Mr. Witham stated he feels that none of the criteria has been met to grant the request.

The motion to deny passed unanimously with a 5 – 0 vote.

B) Request for an Extension of Time for an additional one year time period for property owned by Stephen J. Little located at 4 Moebus Terrace on approval given at the February 20, 2001 meeting. Said property is shown on Assessor Plan 207 as Lot 025 and lies within the Single Residence B district.

Vice-Chairman LeBlanc made a motion to grant the extension of time for an additional one-year time period to expire on February 20, 2002; Mr. Jousse seconded. Vice-Chairman LeBlanc stated that because of the issue to access the property as well as receiving the the

necessary approvals, we can grant this request. Nothing has changed in the plans nor have there been any alterations to the project. Mr. Jousse stated he agreed with Vice-Chairman LeBlanc comments and had nothing further to add.

The motion to grant passed unanimously with a 5 – 0 vote.

Let the record reflect that Mr. Jousse stepped down from this application leaving four voting members.

C) Request for a Rehearing for Joseph Almeida, owner, for property located at 37 Prospect Street requested by John E. Lyons, Jr., Esquire. Said property is shown on Assessor Plan 141 as Lot 016 and lies within the General Residence A district.

Mr. Horrigan made a motion to deny the request for rehearing; Mr. Witham seconded for discussion. Mr. Horrigan stated this Board normally votes on whether there was a procedural error made or if there is new evidence being presented. However, there is nothing in the request that would warrant a Request for Rehearing. Mr. Witham stated he will not support the motion. This application should not be denied because of parking issues since the application meets the parking guidelines; therefore, this request can be granted.

Vice-Chairman LeBlanc stated that the parking issue is only a portion of the reason why he made the motion to deny. To grant the request will overintensify the lot because the lot requirement has not been met and added that he will support his motion to deny.

Chairman Blalock stated he agreed with Mr. Witham's comments and added that he felt the Board made a mistake. The criteria has been met and feels that an error has been made on the part of the Board.

The motion to deny failed with a 2 – 2 vote with Mr. Witham and Chairman Blalock voting in the negative.

Chairman Blalock passed the gavel to Vice-Chairman LeBlanc.

Mr. Blalock made a motion to grant the Request for Rehearing; Mr. Witham seconded. Mr. Blalock stated he feels the criteria has been met. The required parking has been satisfied. Mr. Witham agreed it was a lot coverage Variance being a little over 10%. The surrounding property values will not be diminished to grant the request.

The motion to grant failed with a 2 – 2 vote with Mr. Horrigan and Acting Chairman voting in the negative.

III. PUBLIC HEARINGS

1) Petition of Steven Katona and Marie Wood, owners, for property located at 98 Thaxter Road wherein a Variance from Article III, Section 10-302(A) is requested to allow: a) 24' x 30' attached 1 1/2 story two car garage with a accessory workshop on the second floor with a 6' rear yard where 30' is the minimum required, b) steps for a deck expansion with a 28'4" rear yard where 30' is the minimum required; and, c) 32.3% building coverage

where 20% is the maximum allowed. Said property is shown on Assessor Plan 166 as Lot 33 and lies within the Single Residence B district.

SPEAKING IN FAVOR OF THE PETITION

Ms. Wood, an owner of the property, stated that she has lived at this location for the past three years. We are expecting another child; therefore, we are proposing to increase the size of the kitchen; replace a garage that has been there since the 1930's with a new 1-1/2 story garage that would allow for a workshop on the second floor; and replace the existing deck that has been there for over twenty years that has deteriorated and is unsafe with a new deck that will be joined to the garage .

Ms. Wood stated that she has spoken with her adjacent direct abutter and they have no objections. During the past three years they have been there, they have continually made improvements to the home.

Mr. Witham asked Ms. Wood if the proposed garage would have dormers. Mr. Katona replied no.

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; Mr. Horrigan seconded. Vice-Chairman LeBlanc stated he did not see any diminution to surrounding properties on the setback problems and what is being proposed, will add greatly to the neighborhood; therefore, this request can be granted. Mr. Horrigan stated that he agreed the existing garage needs to be replaced and added there really is no other place for it. This is a project that will be within the public interest.

Chairman Blalock stated he also agreed and added that the project will be a tremendous improvement to the home. All the criteria has been met to grant the petition and added the hardship test has been met as well.

The motion to grant passed with a 4 – 1 vote with Mr. Witham voting in the negative.

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

2) Petition of William and Janine St. Laurent, owners, for property located at 24 Kent Street wherein a Variance from Article III, Section 10-301(A)(3)(a) is requested to allow 26' x 36' two story single family dwelling with a 4' x 26' front porch and a 6' x 8' back porch on an existing lot having 5,000 of lot area where 7,500 sf of lot area is required. Said property is shown on Assessor Plan 113 as Lot 39 and lies within the General Residence A district.

SPEAKING IN FAVOR OF THE PETITION

Mr. William St. Laurent, the owner of the property, stated he has been residing at 11 Elwyn Avenue and would now like to construct a home for his family on 24 Kent Street. The home

will be 24' wide x 36' in length. This same application was approved two years ago; however, we had to abandon the project temporarily. He added that both he and his wife grew up in Portsmouth and want to continue to live in this area and raise their family.

FURTHER SPEAKING TO THE PETITION

Mrs. Horrigan, a direct abutter to the rear on 35 Elwyn Avenue, stated there is a large chestnut tree on the rear property line that is over 100 years old that she would like to see preserved.

Chairman Blalock asked Mr. St. Laurent if he had any plans for that tree. Mr. St. Laurent stated there are a couple of threes that will have to be taken down as well as many branches that have fallen down. He stated he would like to save the tree and will address that issue.

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

DECISION OF THE BOARD

Mr. Jousse made a motion to approve the application as presented and advertised; Vice-Chairman LeBlanc seconded. Mr. Jousse stated the relief being requested is minimal since most of the lots in this area are about 5,000 s.f. and most of the lots do not meet the lot requirement. The size dwelling would conform to the surrounding dwellings and is not more than what was granted to the other lots. Mr. Jousse recommended that the large chestnut tree in the rear be preserved because it will provide shade during the summer months making the home 20 degrees cooler. Vice-Chairman LeBlanc stated he agreed and added the lots in the area are small and the proposed house is in proportion to the lot. Dimensional relief is not needed.

Chairman Blalock stated he agreed and added the criteria was met in 1999 when this application was granted originally and the lot is a buildable lot and has been one for a long time. He added the criteria has been met and therefore, this request should be granted.

The motion to grant passed unanimously with a 4 – 0 vote.

3) Petition of Dana S. Levenson, owner, for property located at 90 Curriers Cove wherein a Variance from Article III, Section 10-302(A) is requested to allow a 14' x 26' two story addition to an existing attached garage resulting in a 10' left side yard where 20' is the minimum required. Said property is shown on Assessor Plan 204 as Lot 15 and lies within the Single Residence A district.

SPEAKING IN FAVOR OF THE PETITION

Mr. Dana Levenson, the owner of the lot, stated he has been living at this location with his three children on a 2+ acre lot that is shaped very irregular. The 20' setback required will be violated creating a 10' left side setback for the proposed addition. We did think about a detached garage, but no one felt that this would be appropriate. We have spoken to all our neighbors and they are in agreement with our plans.

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; Mr. Horrigan seconded. Vice-Chairman LeBlanc stated there is a hardship in this particular case because of the way the house sits on the lot. When it was originally built, they did not think of having a three car garage. Because of the angle of the house and the odd property lines, we are only looking for relief of 1'; therefore, this can be granted. Mr. Horrigan stated he agreed and added that this is just minimal relief being requested.

Chairman Blalock stated he agreed and added in the memo from the Planning Department staff, it is indicated that only the back corner of the addition needs relief from the required setbacks.

The motion to grant passed unanimously with a 5 – 0 vote.

4) Petition of 200 International, LP, owner, for property located at 200 International Drive wherein a Variance from Part 303.04(B) of the Pease Development Authority Zoning Ordinance is requested to allow 3,000 sf of the first floor in an existing office building to be used as an Educational Training Center. Said property is shown on Assessor Plan 312 as Lot 3 and lies within the Industrial district.

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernard Pelech, representing 200 International Drive, stated the building is 80,000 s.f. and has many light industrial units that vary from 3,000 s.f. to 12,000 s.f. in size. He stated that the University System of New Hampshire has contacted the applicant to provide spaces and facilities to establish the Pease Educational Training Center adding they will specialize in business and industrial development in approximately 3,000 s.f. of space on the first floor having a total of three classrooms at 200 International Drive in the Industrial zone.

Attorney Pelech stated that educational facilities are not permitted in the Industrial zone of the PDA Zoning Ordinance. The applicant feels that all the criteria has been met and added that there would not be any adverse effect or diminution in values to surrounding properties created to grant the application. He stated that the property is designed as a multipurpose "flex" building which allows light industrial uses and office use in the same building. The surrounding properties are also light industrial and office uses. To grant this request would not diminish surrounding property values. Public interest would also be served because there is definitely a need for educational facilities as the type proposed by the University System. The facility would be utilized by people at the Tradeport.

Attorney Pelech stated the Industrial zone is intended for industrial uses that do not require direct access to the airport. Granting of the Variance would do substantial justice. A hardship would be created to the owner if the Variance was denied and greatly outweighs any benefit to the general public to deny the Variance. To use a portion of the property as an educational facility would not be contrary to the spirit and intent of the Ordinance.

Attorney Pelech requested the Board look favorably upon the request.

Chairman Blalock stated that 3,000 s.f. is not even 4% of the building. Attorney Pelech replied that was correct.

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

DECISION OF THE BOARD

Mr. Horrigan made a motion to accept the petition as advertised and presented; Vice-Chairman LeBlanc seconded. Mr. Horrigan stated he agreed with the petitioner that there will be no diminution to surrounding property values and there are other educational facilities located in the area. He added this is a fantastic idea and would be harmonious with the building. To deny the application would severely curtail the use of the building. Vice-Chairman LeBlanc stated he agreed and added that to add an educational facility is critical to an industrial area. There will be no problems created for the current tenants.

Vice-Chairman LeBlanc stated that this Board recommends approval to the PDA for this Variance request. The Board members all agreed and passed the recommendation with a 5 – 0 vote.

5) Petition of Seacoast Trust, owner, for property located at 150 Rt 1 By Pass wherein Variances from Article II, Section 10-206 and Article IV, Section 10-401(A) are requested to allow a 5,208 sf one story addition to the right side of the existing medical office building for additional medical office use. Said property is shown on Assessor Plan 231 as Lot 58 and lies within the Single Residence B district.

SPEAKING IN FAVOR OF THE PETITION

Bernard W. Pelech, Esquire, representing the owner, stated that they were before the Board in March of 2001 with a request for the same property to construct a second story addition on top of the existing one story building and was granted with stipulations. Site Plan approval was received to allow the second story; however, during the process, a structural engineer determined that the load bearing capacity of the existing structure, the footings and foundation made the second story impractical. This building was built originally in the 1960's to be used as a rehabilitation center.

Attorney Pelech stated the applicant is now proposing to add a 5,206 s.f. addition on to the right side of the existing structure. The existing parking lot will be reconfigured and 4 additional parking spaces will be provided. Attorney Pelech stated there is a hardship in this case because the Ordinance interferes with reasonable use of the property. The property is a nonconforming use and any changes or increase in the use would require a Variance; therefore, we need a Variance to allow the expansion of the existing structure which is approximately 50% of the size of expansion approved by the Board in March of 2001. The proposed use is reasonable because it conforms with the use, which has been in existence for the past 40 years. The use is ideal for the location because it is a low intensity use and has reasonable hours of operation adding there will be little impact to the abutters than the expansion had when it was approved in March of 2001.

Attorney Pelech stated the applicant has worked with the abutters to address their concerns and will also work with abutters during the Site Review Process. The uses on the property

serve a substantial public interest and added there will be no benefit to the general public to deny the application and would result in an unnecessary hardship to the owner. To grant the request will do substantial justice since it will continue to allow the applicant to serve the needs of the general public. The use has existed for the past 40 years at this location; therefore, it will not impact or be disruptive to the neighborhood. Attorney Pelech feels all the criteria has been met to grant the request.

Mr. Horrigan asked if some type of vegetation could be put in along the fence? Attorney Pelech replied that they would have no problem doing that.

FURTHER SPEAKING IN FAVOR OF THE APPLICATION

Mr. Peter Weeks, stated that back in March of last year, this Board granted approval; however, the footage would not support a second story. The business has been a good neighbor and they perform a service. The hours of operation have been established and will not be open on Sunday, unless there is an emergency. He feels the addition will be good for the neighborhood.

Mr. Peter Coren, an abutter at 356 Middle Road, stated that the owners of the property have been good neighbors; however, he stated he has some concerns. He stated that about a year ago, vegetation was removed that provided a sound buffer to the residential area; he would like to see the access road addressed; the existing lighting points directly to the houses on Middle Road. When this application was approved previously, the lighting was to be shrouded so as not to disturb the abutters.

Mr. Witham stated the access road should be kept closed to the public.

Mr. Weeks stated that the lighting would be directed away from the residential area.

Mr. Jousse stated if this application is approved, do we need to reiterate the stipulations made in March of last year? Chairman Blalock replied that "yes" you would have to do that.

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

DECISION OF THE BOARD

Vice-Chairman LeBlanc made a motion to grant the petition as presented and advertised with the following stipulations:

- That the gravel driveway to Middle Road be closed off;
- That all the lights in the parking areas be downshielded away from the abutting residential dwellings; and,
- That the hours of operation be from 7:00 a.m. to 8:00 p.m. Monday through Friday and from 7:00 a.m. to 12:00 noon on Saturdays as well as by appointment for emergencies only on Sunday.

Mr. Horrigan seconded. Vice-Chairman LeBlanc stated this business is a very successful operation. They want to expand and add on to the side of the building. The criteria has been met and with the added stipulations, the neighborhood is being protected; therefore, this application can be granted. Mr. Horrigan stated he agreed and added that this is a material

growth of a nonconforming business. This proposal is less obtrusive than what was granted previously; therefore, we can grant this application.

Mr. Jousse stated he would like to add another stipulation to the motion:

- That arborvitae be planted along the fence between the property line and the new addition on Hillside Drive as depicted on the plan by Vice-Chairman LeBlanc. Both the maker of the motion and the second agreed to the added stipulation.

The motion to grant with the above stipulations passed unanimously with a 5 – 0 vote

6) Petition of Thomas Vento, Grantor of 1996 Trustee, owner, for property located at 102 Marne Avenue wherein the following are requested: 1) a Variance from Article III, Section 10-302(A) to allow an existing non conforming frontage to be reduced to 25'± as a result of a lot line relocation with the abutter where 100' is the minimum required, and 2) a Variance from Article III, Section 10-301(A)(1) to allow the conversion of the single family dwelling to a two family dwelling with 25'± of frontage where 100' is the minimum required. Said property is shown on Assessor Plan 222 as Lot 43 and lies within the General Residence A district.

At the request of Attorney Charles Griffin, this application was withdrawn to the February 19, 2001 meeting to allow for a full Board to be present.

7) Petition of Abby Cohen, owner, and Gary Dellner, applicant, for property located at 44 Pearson Street wherein a Variance from Article IV, Section 10-402(B) is requested to allow an 8' x 12' one story shed with a 9' rear yard where 10' is the minimum required. Said property is shown on Assessor Plan 232 as Lot 108 and lies within the Single Residence B district.

SPEAKING IN FAVOR OF THE PETITION

Mr. Gary Dellner, an owner of the property, stated he was proposing to add on an 8' x 12' one story addition onto his existing shed; however, this has created a 9' rear yard setback where 10' is required. He feels the request is minimal being only 1' of relief.

Mr. Horrigan asked if the larger tree in the back yard would be taken down? Mr. Dellner replied no that it would not be taken down.

Mr. Witham stated there is a 3-1/4" space between the sheds making the new shed have less of a setback. Mr. Dellner replied that was correct; however, eventually, he would like to have the option to connect the two sheds.

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

DECISION OF THE BOARD

Mr. Witham made a motion to approve the application with the stipulation that the owner be allowed to connect the proposed shed to the existing shed; Mr. Horrigan seconded. Mr.

Witham stated that all the criteria had been met to grant the Variance and added that it would look odd if the required setbacks had to be adhered to. Mr. Horrigan stated he agreed and added that it makes sense to have the shed line up with the existing shed. The sheds will not be seen because it is totally obscured by evergreens.

The motion to grant with the above stipulations passed unanimously with a 5 – 0 vote.

IV. ADJOURNMENT

There being no further business to come before the Board, the Board acted unanimously to adjourn the meeting and meet at the next scheduled meeting on February 19, 2002 in the City Council Chambers at 7:00 p.m.

Respectfully submitted,

Joan M. Long
Secretary

/jml