

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

**7:00 P.M.**

**MARCH 19, 2002**

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

**MEMBERS EXCUSED:** Bob Marchewka; Alain Jousse; and, Chris Rogers

**ALSO PRESENT:** Lucy Tillman, Planner I

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Chairman Blalock announced that there was a short Board having only five voting members for this meeting. He added that 3 affirmative votes are needed to grant a rehearing and that 4 affirmative votes are needed to grant a Variance. Petitioners have the option of withdrawing their application to the April 16, 2002 meeting to allow for a full Board to be present.

Chairman Blalock also announced that item A under Old Business, the R & L Enterprises petition under Old Business has requested to be withdrawn to the April 16, 2002 meeting as well as Public Hearings, item #4 the petition of J. Tyler Rohrer and item #7 Leonard and Anne Kovit and Mary Yager be withdrawn to the April 16, 2002 meeting to allow for a full Board to be present.

**I. Approval of Minutes – Meeting of February 19, 2002**

Mr. Witham stated on page 3, the second to last paragraph under Decision of the Board, it is stated that Mr. Witham would not support the tabling motion **because** he has the same concerns as Mr. Horrigan has on the traffic issues. However, the sentence should have reflected that Mr. Witham stated he will not support the tabling motion **although** he shares the same concerns as Mr. Horrigan on the traffic issues.

Let the record reflect this correction has been made.

Vice-Chairman LeBlanc made a motion to approve the minutes with the above correction; Mr. Holloway seconded. The motion passed unanimously with a 5 – 0 vote.

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**II. Old Business**

**A) Petition of R & L Enterprises, Inc., owner, and Anthony Giovannettone, applicant,** for property located off Lang Road wherein the following are requested to allow the construction of a 28' x 65' two story building to be used as a Trade/Craft Shop: a) a Variance from Article III, Section 10-304(A) to allow a 10' left side yard where 30' is the minimum required; 2) a Variance from Article XII, Section 10-1203(A)(1) to allow the loading berth to be located between the front of the building and the front property line, located in such a manner as to block 2 of the parking spaces and interfere with the backing out of the other 2 parking spaces where such a configuration is not allowed; and, 3) a Variance from Article XII, Section 10-1204 Table 15 to allow 4 nonconforming parking spaces to be

provided where 7 parking spaces with 24' travel aisles are required. Said property is shown on Assessor Plan 286 as Lot 022A and lies within the General Business district. This application was tabled at the July 17, 2001 meeting to time uncertain to allow for a Conditional Use Permit to be obtained.

Let the record reflect that a request was received to withdraw the application to the next scheduled meeting on April 16, 2002.



**B) Request for a Rehearing for Lawrence N. and Ruth S. Gray, owners** for property located at 80 Currier's Cove requested by Bernard W. Pelech, Esquire. Said property is shown on Assessor Plan 204 as Lot 014 and lies within the Single Residence A district.

Attorney Pelech, representing the owners, stated he would like to table the application to the April 16, 2002 meeting to allow for a full Board to be present.

Vice-Chairman LeBlanc made a motion to table the Request for Rehearing; Mr. Holloway seconded and all approved unanimously with a 5 – 0 vote.



**C) Request for a Rehearing for Coventry Assets, Ltd., owners,** for property located at 10 Pleasant Street requested by Bernard W. Pelech, Esquire. Said property is shown on Assessor Plan 107 as Lot 082 and lies within the Central Business B and Historic A districts.

Mr. Horrigan made a motion to grant the Request for Rehearing as presented; Vice-Chairman LeBlanc seconded. Mr. Horrigan stated that this Board should only grant a rehearing if a procedural error was made or if there is new evidence being presented; however, item #20 in the request indicates that the applicant is entitled to 4 s.f. of signage, exclusive of the Porter Street sign. Vice-Chairman LeBlanc stated he will not support the motion even though this information does not affect the decision that was made originally. The applicant can obtain signage within the square footage that is allowed. There is nothing new being presented and should be denied.

The motion to grant passed with a 3 – 2 vote with Mr. Witham and Vice-Chairman LeBlanc voting in the negative.



**III. Public Hearings**

**1) Petition of Richard P. Fusegni, owner of Map R-38, Lot 17 and DSP Shopping Center, LLC., owner of Map R-38, Lot 16** for property located at 1574 Woodbury Avenue wherein the following are requested to construct a 50' x 100' one story structure and to permit the following: 1) a Variance from Article III, Section 10-304(A) to allow: a) a rear yard of 6' where 50' is required; and, b) a side yard of 10' where 30' is required; 2) a Variance from Article XII, Section 10-1201(A)(3)(e)(2) to allow parking 20' from the front property line with a landscape buffer where all parking and accessways are to be located at least 40' from the front property line with a landscape buffer; and, 3) a Variance from Article XII, Section 10-1201(A)(1) to allow nine vehicles to park on an adjacent lot not in the same

ownership where parking is allowed on an adjacent lot in the same ownership by Special Exception. Said property is shown on Assessor Plan 238 as Lots 16 and 17 and lies within the General Business district.

### **SPEAKING IN FAVOR OF THE PETITION**

Attorney Bernard Pelech, representing the owners as well as the applicant, stated this is the same Variance that was granted in November of 2000. Unfortunately, the Variance had lapsed and the process will need to start over again. On Lot 017 there are three residential structures that contain five dwelling units and added they are nonconforming because of the lot size, the frontage as well as the rear right yard and left side yard. This particular lot was originally intended to be incorporated into the DSP Shopping Center. However, the developer of the shopping center and the owner of the residential lots were unable to reach an agreement and Lot 017 was never incorporated into the shopping center.

Attorney Pelech stated that nothing has changed on the plan since the original approval was received in November of 2000. Signalization has been installed at the Commerce Way intersection and will be aligned with the driveway across the street for the construction of a 50' x 100' building (restaurant) on the other side of Woodbury Avenue. Attorney Pelech added that 61 of the 70 required parking spaces would be provided on site and the remaining 9 spaces will be located on the Durgin Square parking lot which is adjacent to the property. The 20' landscaped buffer on Woodbury Avenue and the parking configuration was designed to require an access from the access road leading to Woodbury Avenue. However, this was not acceptable to the Planning Department or to the City Traffic Engineer. As a result, the plan was reconfigured to maximize the landscaped buffer on the front of the lot. Access will be from the rear of the lot.

Attorney Pelech then addressed the criteria that is required adding that the hardship in this case is inherent in the land. No meaningful use of the property can be made in accordance with the Zoning Ordinance without the Board granting the Variances and would in the end make the property more conforming than it exists. There will be no diminution in value to surrounding properties since all surrounding properties are Commercial. To grant the request will not be contrary to the spirit and intent of the Ordinance and the public interest will benefit because the property will be more in compliance with the Ordinance. He added that public interest will be benefited because the structure that will be constructed will have a higher assessed valuation than the structures that exist on the property, giving a larger tax base to the City. Attorney Pelech stated that since the Board granted this same request a year and a half ago and nothing has changed, he asked that the Board look favorably upon the request.

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

### **DECISION OF THE BOARD**

Vice-Chairman LeBlanc made a motion to grant all three Variances as presented and advertised; Mr. Holloway seconded. Vice-Chairman LeBlanc stated that this plan is exactly the same as it was in November of 2000 and added the only place for this building is in the upper right hand corner of the lot. The structure will back up to the parking lot; therefore, these Variances can be granted again. Mr. Holloway agreed and had nothing further to add.

Chairman Blalock stated that various boards have worked on this project many times and it is ideal that something is going to be done. This will allow the owner of the property to make the best use of the property, and he added that the traffic flow has been worked out very nicely.

Mr. Horrigan stated he will support the motion also; however, he does wish there could be more of a buffer zone along Woodbury Avenue.

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

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At this time, Chairman Blalock reviewed the list of applications that would be moved to the April 16, 2002 meeting of which Item #6 for Arthur and Sharon Pierce, owner and Federal Cigar, LLC applicant made a request to withdraw the application to the April 16, 2002 meeting. Mr. Holloway made a motion to table the application to the April 16, 2002 meeting; Mr. Horrigan seconded and all agreed.

Chairman Blalock stated that items A and B under Old Business and items #4, #6, and #7 under Public Hearings have been moved to the April 16, 2002 meeting.

**2) Petition of Ted Blank and Tina Gleisner, owners,** for property located at 238 Highland Street wherein a Variance from Article III, Section 10-302(A) is requested to allow: a) a 12' x 22'6" 2 ½ story addition to the rear of an existing building with a 9' right side yard where 10' is the minimum required, b) a 9' x 18' exterior stair for the 3<sup>rd</sup> floor apartment with an 8' left side yard where 10' is the minimum required; and, c) 30.9% building coverage where 25% is the maximum allowed. Said property is shown on Assessor Plan 130 as Lot 37 and lies within the General Residence A district.

**SPEAKING IN FAVOR OF THE PETITION**

Ms. Tina Gleisner, the owner of the property, stated this request was approved in December of 2000; however, the permit lapsed; and we are asking for the same approval again. Anne Whitney, the architect for our project, could not be present this evening since she has two other meetings to attend. Ms. Gleisner stated the plans have been reviewed by her neighbors and they are in full agreement. We wish to construct a 12' x 22'6" two and half story addition to the rear of our home creating a 9' right side yard setback and a 9' x 18' exterior staircase for the third floor apartment that will be a little more sturdier and safer; however, it will create a 8' left side yard. The staircase will be visible from the back of the property only. The building coverage will be increased to 30.9%. Ms. Gleisner reiterated there are no alternations to the plan that was originally approved.

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

**DECISION OF THE BOARD**

Mr. Horrigan made a motion to grant the petition as advertised and presented; Vice-Chairman LeBlanc seconded. Mr. Horrigan stated that although this is a 3-part Variance, the right and left side yard setbacks are already existing. The exterior stairs should be replaced because of the dilapidated condition they are in. There is no reason to deny the application.

Vice-Chairman LeBlanc stated he agreed and added the owners are only asking for a minimal amount of relief.

Chairman Blalock stated he agreed also and added that all the criteria has been met. The owners should have applied for a one-year extension for their project and added that sometimes it is difficult to get all the needed approvals from the City and to obtain a contractor for the project. There is no reason to deny the application.

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



**3) Petition of Greg H. and Laura J. Ludes, owners,** for property located at 274 Miller Avenue wherein a Variance from Article II, Section 10-206(11) is requested to allow the second floor of the existing garage to be converted into a home office (Home Occupation I) having 630 sf of floor area where 300 sf of floor area is the maximum allowed for a Home Occupation I. Said property is shown on Assessor Plan 130 as Lot 22 and lies within the General Residence A district.

**SPEAKING IN FAVOR OF THE PETITION**

Mr. Greg Ludes, an owner of the property, stated that he and his wife have made a lot of renovations to their home and would now like to convert the second floor of his detached garage for office space since he is an independent sales rep for Maine and New Hampshire for sporting goods. The office space would house his computer, a telephone, and a fax machine. Mr. Ludes stated the existing space is 630 s.f. in area and it would be hard to reduce the area to the required 300 s.f..

Chairman Blalock read a letter into the record from Ms. Susan Chase an abutter located at 290 Miller Avenue that stated the proposal will not adversely affect the neighborhood nor will it cause additional traffic or a hazard to the neighborhood

Mr. Tom Rooney, an abutter located at 29 Spring Street, stated that Mr. Ludes has made a lot of renovations to the property and it is very tastefully done. He has no objections to the request.

Chairman Blalock asked Mr. Ludes if he would be the sole employee? Mr. Ludes replied that he would be.

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 there be no cooking facilities allowed in the building. Mr. Holloway seconded. Vice-Chairman LeBlanc stated it would be senseless to reduce the area of the second floor on the garage to the required square footage of 300'; therefore, this request can be granted and with the added stipulation that there be no cooking facilities allowed in the building will ensure that the use remain that way eliminating the possibility that the second floor could turn into an apartment. Mr. Holloway stated he agreed and had nothing further to add.

Chairman Blalock stated he agreed and added that his Father-in-law was in the same kind of business being an independent sales rep for sporting equipment. There were no trucks, inconveniences or was it an overburden to the neighborhood.

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



**4) Petition of J. Tyler Rohrer, owner, for property located at 46-48 Columbia Street** where in the following are requested to expand the footprint of an existing building and to add two additional dwelling units: 1) a Variance from Article III, Section 10-302(A) to allow a 2'5" right side where 10' is the minimum required, 2) a Variance from Article IV, Section 10-401(A)(2)(b) to reconstruct and enlarge a non-conforming building by infilling the corners, moving the front entry and changing the flat roof to a pitched roof, 3) a Variance from Article II, Section 10-206(3) to allowed two additional dwelling units in the newly created third floor for a total of six dwelling units in a district where such use is not allowed; and, 4) a Variance from Article III, Section 10-302(A) to allow 1,438.5 sf of lot area per dwelling unit for a total of 8,631 sf lot area for six dwelling units where four dwelling units are grandfathered if they where reconstructed as the original building. Said property is shown on Assessor Plan 156 as Lot 16 and lies within the Apartment district.

The Board received a request to withdraw the petition to the April 16, 2002 Board of Adjustment meeting to allow for a full Board to be present.



**5) Petition of Kevin M. and Maureen Semprini, owners,** for property located at 954 Islington Street wherein the following are requested for a 8' x 30' farmer's porch on the back of the existing dwelling and a 24' x 24' detached garage with dormers: 1) a Variance from Article III, Section 10-302(A) to allow the porch with an 8' right side yard where 10' is the minimum required and building coverage of 22.6% (including both the porch and garage) where 20% is the maximum allowed; and, 2) a Variance from Article IV, Section 10-402(B) to allow the garage to have a 2' rear yard and a 2' right side yard where 13.5' (75% of the height) is the minimum required for each side. Said property is shown on Assessor Plan 166 as Lot 38 and lies within the Single Residence B district.

**SPEAKING IN FAVOR OF THE PETITION**

Mr. Kevin Semprini, the owner of the property, presented a letter from the adjacent property manager of property located at 962-966 Islington Street indicating that they were in favor of the petition. He stated we are proposing to demolish the existing garage that is rotting and in great need of repair. The garage has been there for many years and is too small for today's standard vehicle. He is proposing a two-car garage that will have a 2' rear and a 2' side yard setback. The existing garage has 1' setbacks; therefore, we feel the proposed garage will be more conforming.

Mr. Semprini stated he was concerned for his family because of the deteriorating garage. He added that he is also proposing a farmer's porch to the rear and added that he takes great pride in his residence. All the conditions have been met to grant the request and there will be no diminution to surrounding property values because the surrounding properties are a large apartment building and a warehouse. To grant our request will not be contrary to the

spirit and intent of the Ordinance and to deny our request would result in an unnecessary hardship because of the narrowness of the lot. The lot is unique because the lot lines are angled causing the setback problems.

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. Witham seconded. Mr. Horrigan stated that as the petitioner has indicated, the house sits on the lot at a strange angle and is not able to conform to the setbacks required. The existing garage should be replaced since it is dilapidated and could possibly fall down and become a safety hazard. The building coverage has been increased because the lot is small; therefore, anything that is proposed would increase the coverage. Mr. Horrigan added that he feels the new construction will enhance the neighborhood. Mr. Witham stated he agreed and added the farmer's porch makes sense and is a reasonable request. The two-car garage is also reasonable because the garage does appear to be rotting away and added that he was comfortable with the size.

Chairman Blalock stated he also agreed and added the request is minimal and feels strongly that everyone should have a garage. The existing garage does look as though it is falling down. This is a reasonable request and the setbacks are being improved.

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



**6) Petition of Arthur and Sharon Pierce, owners, Federal Cigar LLC, applicant,** for property located at 2968 Lafayette Road wherein a Variance from Article II, Section 10-207 is requested to allow a retail sales business in a 600 sf building in a district where such use is not allowed. Said property is shown on Assessor Plan 292 as Lot 31 and lies within the Mixed Residential Business district.

The Board received a request to withdraw the petition to the April 16, 2002 Board of Adjustment meeting to allow for a full Board to be present.



**7) Petition of Leonard and Anne Kovit, owners of 2200 Lafayette Road and Estate of Mary Yager, owner of 2236 Lafayette Road** wherein a Variance from Article III, Section 10-304(A) is requested to allow a lot line relocation between a non-conforming lot of 10,055 sf (Lot 2) and a conforming lot of 48,843 sf (Lot 1) resulting in two non-conforming lots, Lot 1 having 22,453 sf of area and 196.55' of frontage and Lot 2 having 36,446 sf of area where the minimum lot area required is 43,560 sf and the minimum frontage required is 200'. Said property is shown on Assessor Plan 267 as Lots 1 and 2 and lie within the General Business district.

The Board received a request to withdraw the petition to the April 16, 2002 Board of Adjustment meeting to allow for a full Board to be present.



8) **Petition of Jane H. O'Connor, owner**, for property located at 37 Harrison Avenue wherein a Variance from Article III, Section 10-302(A) is requested to allow a 10' x 16' sunroom addition with an 18' rear yard where 30' is the minimum required. Said property is shown on Assessor Plan 251 as Lot 18 and lies within the Single Residence B district.

**SPEAKING IN FAVOR OF THE PETITION**

Ms. Jane O'Connor, stated that shewanted to construct a sunporch to the rear of her house where there is plenty of sun. The lot is double size, but the backyard is small. There is a small 15' x 26' swimming pool on one side of the house and the sunporch could not be located on that side. To allow the sunporch will also allow for another means for egress from the house rather use the front door continuously. The yard has been fenced in.

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. Witham seconded. Vice-Chairman LeBlanc stated that since the yard is small and the proposed location is the only logical place for the sunporch this request should be granted. There will be no diminution to surrounding property values and will improve the marketability of the house. Mr. Witham stated he agreed and added the request is reasonable and modest and he added that all the criteria has been met to grant the request.

Mr. Horrigan stated he agreed and added the lot is heavily wooded and the proposed location is the only logical place for the sunporch

The motion to grant 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 and meet at the next scheduled meeting on April 16, 2002.

Respectfully submitted,

Joan M. Long  
Secretary

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