

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

7:00 P.M.

April 16, 2002

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

MEMBERS EXCUSED: Nate Holloway

ALSO PRESENT: Lucy Tillman, Planner I

.....

Old Business and Public Hearings #1 through #7 will be heard on April 16, 2002; however, due to the length of the Agenda, **Public Hearings #8 through #18 will be heard on the following Tuesday, April 23, 2002 at 7:00 p.m.** in the City Council Chambers.

I. APPROVAL OF MINUTES

Vice-Chairman LeBlanc made a motion to approve the minutes from the meeting of March 19, 2002; Mr. Rogers seconded and all approved unanimously with a 7 – 0 vote.

.....

I. 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 March 19, 2002 meeting to the April 16, 2002 meeting.

Vice-Chairman LeBlanc made a motion to take the application off the table; Mr. Rogers seconded and all agreed with a 7 – 0 vote.

SPEAKING IN FAVOR OF THE PETITION

Bernard W. Pelech, Esquire, representing the owner of the property and the applicant, stated a Conditional Use Permit was required and obtained in February of this year for the project because over an acre of the lot is in the wetlands area. He added that there was some dispute over the right of way; however, that issue has also been resolved. This application has been on the table for almost a year because of these complications. The applicant is proposing to use the building for his business, which is a cabinetmaker and a woodmaker.

There is existing pavement on the lot that will be removed to create parking for five vehicles on a crushed stone area. The handicapped parking space and the loading area will be located on the paved portion of the accessway. A Variance is required to allow the loading zone to be located between the front property line and the front of the building.

Attorney Pelech stated the current plan has been changed from the original proposal. Six parking spaces are being provided when originally, there were four parking spaces being provided where seven are required. The surrounding properties are Forum Development, Stratham Tire and Gibbs Gas Station. There will be no traffic created only the customers that want to check on the progress of their orders. The applicant is proposing to construct a 28' x 65' two story building having a footprint of 1,820 s.f. and will be situated on the lot to minimize the impact on the wetlands buffer.

Attorney Pelech stated the hardship in this case is created by the wetlands and interferes with reasonable use of the property. There will be no vegetation cut and they will retain the natural foliage that currently exists. There will be no overcrowding of the building or to surrounding properties. There will be no diminution to surrounding property values. The property as it exists now, has illicit activities (parties and dumping of waste). If the Variance is denied, the hardship to the owner would not be outweighed by the general public. The setbacks will be 12-1/2' from the Gibbs Oil; 25' from Stratham Tire and will be within the public interest because the property will be utilized. This proposed building will enhance the area and will not put a demand on municipal services because there will be no children at the site and will be a positive tax flow for the City. He feels the five criteria have been met and asked the Board to grant the application.

Vice-Chairman LeBlanc asked how wide the paved area would be as you approach the building? Attorney Pelech replied 24' in front of the building narrowing down to 20' at the end.

Mr. Horrigan asked if there would be any loading platforms? Attorney Pelech replied there would not be.

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. Jousse seconded. Mr. Rogers stated that after looking at the area and the maps, it would be nearly impossible to build anything on the property without receiving some kind of relief. The applicant has gone through a great deal to allow the wetlands to be protected. The parking is minimal and the proposed use is the best possible use for this property and added the hardship is because 90% of the property cannot be used since the wetlands area is closeby. Mr. Jousse stated he agreed and added that nothing can be done with this property until some relief is received from this Board. The proposed use is good for this piece of property.

Chairman Blalock stated he agreed and added this is a minimal use for the property and some relief will have to be granted.

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



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. This application was tabled at the March 19, 2002 meeting to the April 16, 2002 meeting.

Vice-Chairman LeBlanc made a motion to take the application off the table; Mr. Rogers seconded and all approved unanimously with a 7 – 0 vote.

Mr. Jousse made a motion to grant the rehearing; Mr. Rogers seconded. Mr. Jousse stated the applicant has come forward with some new information that was not available at the original hearing and for those reasons, we should grant the rehearing. Mr. Rogers stated he agreed.

Mr. Horrigan stated he would vote for the rehearing; however, he did not feel that a procedural error had been made by this Board.

The motion to grant passed with a 6 – 1 vote with Vice-Chairman LeBlanc voting in the negative.



C) 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. This application was tabled at the March 19, 2002 meeting to the April 16, 2002 meeting.

Vice-Chairman LeBlanc made a motion to take the application off the table; Mr. Rogers seconded and all agreed with a 7 – 0 vote.

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernard Pelech, representing the owner, and the applicant, stated the property was a four unit three bedroom structure; however, it suffered heavy fire damage in February of this year and is now vacant. He added that because of the front, side and rear yard setbacks, the structure is nonconforming.

Attorney Pelech stated the applicant is proposing to expand the footprint of the structure slightly and add two additional dwelling units having six two-bedroom units ending with the same number of bedrooms. The applicant is proposing to reconfigure the parking lot and will create nine parking spaces and move the entrance of the building from Columbia Street to

the façade facing the new parking area. The existing deck on the rear of the structure will be removed making the rear setback conforming as well as a portion of the front porch and front steps will be removed to increase the front setback from 0" to 6.6'; however, the right side setback that is currently 3.4' would become 2.5'

Attorney Pelech stated that conversions were allowed by the Ordinance prior to 1980 and feels that the application meets the requirements; however, should the Board deny the application, the applicant has applied for a Special Exception to be addressed later on in the meeting; however, the footprint would expand 50 s.f. to provide a more workable floor plan for the units. He feels that all the criteria has been met to grant the request and added that we are not asking to increase the bedrooms, just the number of dwelling units since there is a housing shortage and want to attract young professional couples with no children. The proposed pitched roof on the structure will be more architecturally pleasing than the existing flat roof that is incompatible with the area and will diminish surrounding property values (as indicated by a letter received from Steven McHenry, an Architect in the area). He presented the letter to the Board for review. There will be no diminution in value to surrounding property values since the applicant has spoken to his abutters and they are all in favor of the application. Attorney Pelech presented letters from abutters, Carmen Carnesali, Terry Jepson, Anthony Balakier, Cherie Gieger, Noele Clews and Peter and Pat Rose that indicated they were in favor of the petition.

Attorney Pelech stated that substantial justice will be done to grant the Variance because there will be no benefit to the general public to deny the application. The applicant feels the general public would benefit by granting the Variance since more off-street parking will be provided lessening congestion in the streets and a more aesthetically pleasing building would be constructed conforming to the building codes since the existing building does not conform to current codes. He added that the Ordinance interferes with reasonable use of the property. This neighborhood is a very mixed use and most of the lots are multi-family; therefore, the proposal is not out of character for the neighborhood.

Mr. Jousse stated the plans indicate that the units will be two bedrooms units with a study and asked what would prevent the study from being used as another bedroom. Attorney Pelech stated the study area will add light to the unit because there are french doors and there is no closet in this room. He stated his client would be happy to stipulate this.

Mr. Rohrer, the owner of the property, stated that plans were still being worked on for the apartments and at this time have not been completed.

Attorney Pelech stated that granting of the Variance will not interfere with public or private rights of others nor will it be contrary to the public interest because additional housing will be created and added that there will not be an additional demand on municipal services. He feels that all the criteria has been met and asked the Board to 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 the application as advertised and presented; Mr. Marchewka seconded. Vice-Chairman LeBlanc stated he was a little reluctant at first because it looked like a lot of relief was being requested; however, the request is only for an

additional 50 s.f. to allow expansion. He feels this will be a much sounder structure being built since a new foundation will be built. All the criteria has been met. Mr. Marchewka agreed and added the building will be an improvement over what is there currently and it would be within the public interest to grant the request because additional parking will be provided. The entrance will be moved off the street and it would be within the public interest of the neighborhood to build a new structure. Mr. Marchewka added the new building will be an improvement to the area and will support the motion.

Mr. Horrigan stated he would not support the motion; however, he does like the architectural plans for the building. He added that he is concerned that a sociological argument could be created because the Attorney for the owner has indicated that substantial justice will be done by reducing the number of school age children is offensive. The ordinance protects school age children. He will not vote for a proposal that will not allow school age children into the structure. It would be within the public interest to keep the building in its previous state having four three-bedroom apartments.

Chairman Blalock stated he feels there is a lot to swallow in this application; however, he added that he agrees with the comments made by Mr. Marchewka and Vice-Chairman LeBlanc. There is an opportunity to make an improvement and in Portsmouth, there is definitely a lack of housing.

The motion to grant passed with a 6 – 1 vote with Mr. Horrigan voting in the negative.



D) 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. This application was tabled at the March 19, 2002 meeting to the April 16, 2002 meeting.

Vice-Chairman LeBlanc made a motion to take the application off the table; Mr. Rogers seconded and all approved with a 7 – 0 vote.

SPEAKING IN FAVOR OF THE PETITION

Attorney Pelech, representing the owner and applicant, stated this building is 600 s.f. and has seen many businesses over the years on this lot, a taxi cab stand, child care center, pellet stove shop as well as other office and retail uses. Federal Cigar is proposing to use this building at this section of Portsmouth for the retail sales of tobacco related products. The business is a low intensity use and sits 20' from Lafayette Road. The hardship is because it interferes with reasonable use of the property. The proposed use is less intense than what could be allowed.

Attorney Pelech stated there will be no diminution to surrounding property values nor will granting the Variance be contrary to the public interest. He added that a convenience store would be allowed on the property, as a permitted use but would be much more intense than what is being proposed. Attorney Pelech asked that the Variance be granted.

Vice-Chairman LeBlanc asked the hours of operation? Attorney Pelech replied seven days a week from 10:00 a.m. to 6:00 p.m.

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; Vice-Chairman LeBlanc seconded. Mr. Horrigan stated that given the location of the building and the surrounding buildings, there is no fair and substantial relationship with the MRB district. It does not interfere with any reasonable uses of the property and the use will not interfere with the nearby residences. He added that this case fits the Simplex three-part hardship issue.

Mr. Rogers stated he agreed and added to grant the application will not intrude or cause any diminution to surrounding property values.

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



E) 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. This application was tabled at the March 19, 2002 meeting to the April 16, 2002 meeting.

Vice-Chairman LeBlanc made a motion to take the application off the table; Mr. Rogers seconded and passed unanimously with a 7 – 0 vote.

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernard Pelech, representing the owners, presented a plan showing both pieces of property adding that Tax Map 267 Lot 1 surrounds Tax Map 267 Lot 2 on three sides. What is being proposed is to change the lot lines. The residential home on Tax Map 267 Lot 2 is non-conforming regarding the setbacks, the use, and the area size and has been abandoned. The structure is dilapidated, is an eyesore on that part of Lafayette Road, and interferes with site distance for businesses. He added that the applicant would also grant to the State of New Hampshire DOT a 12' wide easement for the widening of Route 1. Attorney Pelech represented a letter from Alan Garland, from the NH DOT in support of the removal of the house because the site distance at this point on Lafayette Road is blocked.

Attorney Pelech stated that the removal of the house would create two lots and the creation of two nonconforming lots. The Ordinance as written, interferes with reasonable use of the property. The public or private rights of abutters will not be interfered with. There will be no diminution to surrounding property values. To allow the request would be within the public interest because it would benefit the removal of the building since it does interfere with site

distance. The lots will be more conforming and it makes sense to allow the lot line relocation. All the criteria has been met and he asked the Board to look favorably on the request. The applicant has been before the Planning Board to request lot line relocation; however, the Planning Board has tabled the application pending action by this Board. The Planning Department memo recommends that the application either be denied or tabled; however, if the application is denied, there is no benefit whatsoever to the City as the nonconforming residential structure will remain in place and will remain an eyesore. The lots are owned by the same applicant and there seems to be some unwillingness to merge the two lots into one, which could then be condominiumized.

Attorney Pelech stated the lot line relocation will simply make the lots nearly equal in size. He feels that all the criteria has been met to grant the application. Attorney Pelech added that the hardship in the land interferes with reasonable use of the property. Both of the lots were created before the present Zoning Ordinance was written. To grant the request would result in substantial justice being done. There would be no public benefit to deny the application because denial would result in the property and the dilapidated house remaining in the same condition. He stated that the applicant does not want to create additional substandard lots, but to create two lots that are equal in size. Attorney Pelech went on to state that granting the Variances will not be contrary to the public interest because the dwelling will be removed and will place a more conforming structure that will have a higher assessed valuation. Attorney Pelech asked that the Board look favorably upon the application.

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. Horrigan seconded. Mr. Rogers stated that it does appear that this lot was created from a much larger lot and it makes sense to re-align the lots. The State will have the ability to use the easement for the widening of Lafayette Road. Mr. Horrigan stated he agreed and added if the widening of the road occurs at this location, Tax Map 267 Lot 2 would become much smaller making the lot unuseable; therefore, it makes sense to grant the lot line revision.

Mr. Witham stated he agreed and added it does make sense to allow this application and added he will support the motion; however, he would not support any other application request for a front setback from Lafayette Road because of the widening of Route 1 in the future.

The motion passed unanimously with a 7 – 0 vote.



II. PUBLIC HEARINGS

1) **Petition of Coventry Assets Ltd, owners**, for property located at 10 Pleasant Street wherein a Variance from Article IX, Section 10-908 is requested to allow: a) a 5.06 sf attached sign for a second floor business in a district where attached signs are not allowed for businesses above the first floor and, b) a 4 sf projecting sign for a business above the first floor where 2 sf of projecting signage is the maximum allowed. Said property

is shown on Assessor Plan 107 as Lot 82 and lies within the Central Business B and Historic A districts.

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernard Pelech, representing the owner, stated the 4 s.f. projecting sign has been withdrawn since the Assistant Building Inspector has indicated this sign will be directional and does not need a Variance. He presented a photograph of the existing McLane Law firm sign on Penhallow Street that will be relocated to 10 Pleasant Street and attached to the building on the second floor. The wood on the sign will be repainted, gold paint will be used where needed and the pediment will be removed. The sign is not overbearing or out of character with the downtown area and is within the spirit and intent of the Ordinance. We are attempting to do the easiest thing. He added that this particular building is one of the nicest and the most appropriate in the downtown area. If the sign was any smaller, it would not be visible for motorists or pedestrians to locate the business. The sign is within keeping of the spirit and intent of the Ordinance and there will be no diminution to surrounding property values. There have been no abutters to address any concerns they may have regarding the request for signage. No public or private right will be interfered and substantial justice will be done to grant the application. The public interest will benefit since it will allow for the law firm to have visibility at their location.

Vice-Chairman LeBlanc asked how many floors the law firm would occupy. Attorney Pelech replied the second and third floor; however, the fourth floor will be vacant.

Mr. Marchewka asked if the sign would need Historic District Commission approval? Attorney Pelech replied that it would not unless it was internally lit.

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 condition that the 5.06 s.f. of attached signage be for the second and third floors of the building; Mr. Marchewka seconded. Vice-Chairman LeBlanc stated he is not big for signs being granted over the amount that is allowed by the Ordinance; however, after looking at the plan, he feels the proposed sign should be allowed for one business that will occupy both floors. For these reasons, this request can be granted with the condition applied. Should the situation change, the applicant will have to come back for further signage changes.

Mr. Witham stated he will not support the motion because it is contrary to the Ordinance. There could be a collage of signs for different businesses being placed on the buildings. He would rather see the owner of the building address a zoning change than deal with this on a case by case basis.

The motion to grant with the added stipulation passed with a 6 – 1 vote with Mr. Witham voting in the negative.



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

2) **Petition of Kathleen Dowling, owner**, for property located at 22 Deer Street wherein a Variance from Article III, Section 10-304(B) is requested to allow a 14' x 26' one story addition 13' in height in a district where the minimum height of a building shall be at least 20'. Said property is shown on Assessor Plan 118 as Lot 13 and lies within the Central Business B and Historic A districts. Case # 26-02

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernard Pelech, representing the owners of both 22 and 28 Deer Street, stated the addition will be an entryway to both properties and constructed to the rear and attached to the existing new structure that will have retail space. This addition will not be visible from the street. Historic District Commission has been received and is pending Site Review approval to demolish the existing structure and construct a new four-story wood and masonry structure. This application will be on the Site Review Agenda in the near future. The proposed building is attractive and will provide access from the rear for both 22 and 28 Deer Streets. The Ordinance requires that all structures in the Central Business district be at least 20' high. However, because of a passageway from Market Street to the rear of the structure with available parking, the entryway becomes necessary. To grant the request would not injure the public or private rights of others nor would the request cause any diminution to surrounding property values. He added that substantial justice would be done to grant the Variance because the hardship to the owner would not be outweighed by any benefit to the public. The Variance will not be contrary to the spirit and intent of the Ordinance since it will provide a second means of egress to both 22 and 28 Market Street.

Attorney Pelech stated that both lots at 22 and 28 Deer Street will be combined before site plan approval is given and added the Ordinance interferes with reasonable use of the property

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. Witham seconded. Mr. Rogers stated the entryway will not be seen from the street and that he has no problem with it being on a large building. It is a minute request. Mr. Witham stated this is a very appropriate request and all the criteria has been met.

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



3) **Petition of Center Corp Taunton LLC, owner**, for property located at 1618 Woodbury Avenue wherein a Variance from Article XII, Section 10-1204 Table 15 is requested to allow 17 parking spaces to be provided where 23 parking spaces are required. Said property is shown on Assessor Plan 239 as Lot 2 and lies within the General Business district. Case # 27-02

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernard W. Pelech, representing both the owner and applicant, stated there were two retail businesses in this building; however, one business has closed and Verizon is the sole business at this time. The Federal Savings Bank is located on one side of the property, Boston Market on the other side and Durgin Plaza is located to the rear. There have been a number of restaurant inquiries for this vacant space and restaurants are an allowed use in this district; however there are 17 parking spaces available and 23 spaces is required. The only two restaurants in the area are the Boston Market and Appleby's. Attorney Pelech presented a letter from abutters indicating that they have no objection to the petition.

Attorney Pelech then addressed the criteria adding that the property is a small lot and there is no place available to add additional parking. The property does have a unique setting because it is abutted by a very large parking lot for Durgin Square Shopping Center to the rear. He added that the Shopping Center owners have no objection to the request. Attorney Pelech stated it would be reasonable to assume that many of the patrons of the proposed restaurant would park in the Shopping Center parking lot. The lot is very small and cannot provide the required parking; therefore, he feels the Ordinance interferes with reasonable use of the property. There will be no diminution to surrounding property values and substantial justice will be done to grant the request. To deny the application would create a substantial hardship to the owner. The public will not be harmed and will not be contrary to the spirit and intent of the Ordinance.

Attorney Pelech referred to the memo from the Planning Department that indicated a traffic study should be provided to show how Woodbury Avenue will be affected. The use is allowed and a traffic study will be completed when the application comes for Site Review approval. Attorney Pelech presented a report that indicated for a high-turnover sit down restaurant showing the average vehicle trip ends. He asked that if the Board wishes to table to next month, his client would have no objection.

Mr. Rogers stated he knows this property well since his wife was leasing part of the property and he was concerned that there should be a sign indicating a right hand turn only when exiting onto Woodbury Avenue since he feels a safety hazard is being created. Attorney Pelech replied he would not have a problem with a stipulation being added.

Mr. Marchewka asked how many seats in the restaurant? Attorney Pelech replied not more than 50.

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 with the stipulation that the Woodbury Avenue entrance/exit be signed for right turn only; Mr. Marchewka seconded. Mr. Rogers stated the only problem would be the entrance from Woodbury Avenue; however, the added stipulation will create a safer ingress/egress. The petitioner is only asking for relief of six parking spaces and the site can be used as a restaurant. Any overflow of parking can use the Shaw's parking lot. He added that he has never seen a problem with parking in that area. The request is minor. Mr. Marchewka agreed and added this whole area has been a bit convoluted and it appears that the overflow of parking will be at the shopping plaza lot. If there were no access at Woodbury Avenue

there would not be an issue; however, with the added stipulation, that you can only turn right on Woodbury Avenue alleviates that.

Chairman Blalock stated he agreed that it is a convoluted area and a difficult area to maneuver and added that he feels a restaurant would generate additional traffic.

Mr. Jousse stated parking will be shared by Verizon and a restaurant use has a much higher parking requirement than retail use; therefore, he will not support the motion.

Mr. Horrigan stated he also will not support the motion because the restaurant requires more parking than the retail use

The motion to grant with the added stipulation failed with a 2 – 5 vote with Mr. Jousse, Mr. Horrigan, Mr. Witham, Vice-Chairman LeBlanc and Chairman Blalock voting in the negative.



4) Petition of Scott Nelson, owner, Mimi Loureiro d/b/a O2 Yoga Studio LLC, applicant, for property located at 63 Market Street wherein a Variance from Article IX, Section 10-908 Table 14 is requested to allow a 5 sf projecting for a second floor business where 2 sf of projecting signage is the maximum allowed for a second floor business. Said property is shown on Assessor Plan 106 as Lot 24 and lies within the Central Business B and Historic A districts. Case # 28-02

SPEAKING IN FAVOR OF THE PETITION

Ms. Loureiro, the applicant for O2 Yoga Studio, stated they were proposing to use the second floor for a yoga studio. She feels the request is reasonable and minimal. She added that hopefully as the business progresses, they will expand to the third floor. There will be no diminution to surrounding property values to allow the sign and presented photographs of signs on the second and third floors in the area to Board members. There is an existing bracket that she stated she will use to hang the sign on.

Vice-Chairman LeBlanc asked the size of the banner on the front of the building? Mr. Loureiro replied that it is 3' x 6' or 18 s.f..

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

DECISION OF THE BOARD

Chairman Blalock passed the gavel to Vice-Chairman LeBlanc.

Mr. Blalock made a motion to grant the application as presented and advertised; Mr. Rogers seconded. Mr. Blalock stated a second floor business needs some sort of signage. There is an existing bracket where there was signage at one time. Two s.f. of signage is very small for a sign and difficult to work a sign within the character of that neighborhood and he added that this is evidenced by all the surrounding signage. The sign meets the criteria because it will create reasonable use of the property.

Mr. Rogers stated he agreed and added that all the signs are pretty much the same size in the area. The proposed sign is attractive; therefore, we can grant this application.

Mr. Jousse stated there are numerous large signs in the area and to put a 2 s.f. sign on the large bracket will look hideous.

Mr. Horrigan stated there are many two s.f. signs on Market Street and the proposed sign does seem to be too large where the majority of signs are smaller.

Acting Chairman LeBlanc stated the signs on Market Street are for first floor businesses. He feels that the 2 s.f. of allowed signage should be revisited by the Ordinance rather than use spot zoning.

Mr. Marchewka stated he agreed and added that the Ordinance should be looked at because to allow only 2 s.f. of signage is much too small.

The motion to grant passed with a 4 – 3 vote with Mr. Horrigan, Vice-Chairman LeBlanc; and Mr. Witham voting in the negative.

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

5) Petition of Kevin and Debra Reichlin, owners, for property located at 326 Thornton Street wherein a Variance from Article III, Section 10-302(A) is requested to allow an amendment to a previously approved petition to allow a second dwelling unit to be located in a new addition attached to a new garage on a 9,809 sf lot where 15,000 sf of lot area would be required for two dwelling units. Said property is shown on Assessor Plan 161 as Lot 14 and lies within the General Residence A district.

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernard W. Pelech, representing the owners, stated the applicant was before the Board several months ago to put an addition onto an existing garage. The owners had sought the help of five contractors to put the addition on and they all came to the same conclusion that the existing garage was unsafe, dilapidated and crumbling away to hold a second story addition. Mr. Roger Clum, the Assistant Building Inspector looked at the garage and also determined it was structurally unsound. Attorney Pelech added that nothing has changed from when the application was granted originally and the new garage will be built on the existing footprint of the existing garage. All the abutters have been contacted and they are in support of the application.

Mr. Horrigan stated there will be no changes what-so-ever to the original plans for the garage. Attorney Pelech replied that was correct. The existing garage will be demolished and a new garage constructed on the same footprint.

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 minor application since it was approved originally and the owner has since discovered that the addition cannot be supported because

of the deterioration of the garage. A new foundation is needed and should be granted. Mr. Marchewka stated he agreed and added that he knows what the applicant is going through since he is having problems with his garage.

Chairman Blalock stated he agreed and added that he feels the request is grantable.

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



6) Petition of Robert J. Andelman and Kathryn R. Lynch, owners, for property located at 3 Boyan Place wherein a Variance from Article III, Section 10-302(A) is requested to allow a 12' x 39' two story addition with: a) 7' right side yard for the garage/2nd floor living space portion of the addition and a 9' right side yard for the screened porch/2nd floor living space portion of the addition where 10' is the minimum required; and, b) 22.7% building coverage where 20% is the maximum allowed. Said property is shown on Assessor Plan 207 as Lot 30 and lies within the Single Residence B district. Case # 30-02

This application was withdrawn to the next scheduled meeting on May 21, 2002.



7) Petition of Susan Werner Thoresen Rev. Trust, owner, for property located at 100 Kensington Road wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) are requested to allow: a) a 4' x 19' covered porch to the rear of the existing nonconforming dwelling with a 16' rear yard where 30' is the minimum required; and, b) a 3'10" x 20'3" two story addition to the front of an existing garage with a 0' left side yard where 10' is the minimum required. Said property is shown on Assessor Plan 152 as Lot 21 and lies within the Single Residence B district. Case # 31-02

SPEAKING IN FAVOR OF THE PETITION

Mr. Robert Thoresen, an owner of the property, stated he was proposing to construct a second floor to his garage and add a 4' addition to the front of the garage. He added he would like to construct a covered porch that will attach the house to the garage. The setbacks are existing and nonconforming; therefore, any kind of addition would be impossible without receiving relief from this Board. Mr. Thoresen stated that he feels the Simplex 3-part hardship test has been met and added that the proposed location for the garage is the only place. To grant the request will not be contrary to the public interest because it is a permitted use. Additional space will be provided that cannot be accommodated in the house.

Mr. Thoresen presented two letters from direct abutters Darlene and Neal Ouellette and Linda and Kenneth Bettcher who would be most affected by the addition and they have indicated they had reviewed the plans and had no objections to the proposed setbacks.

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

DECISION OF THE BOARD

Mr. Rogers made a motion a motion to grant the application as presented and advertised; both Mr. Horrigan and Mr. Witham seconded. Mr. Rogers stated he feels this is a minimal request since there is an addition being added to the garage and the setbacks will not be any

closer than what is existing. The covered porch is a good alternative. There will be no diminution to surrounding property values. Mr. Horrigan stated he also agreed and added the lot is shaped peculiar; however, the existing location is the only place for the garage. Mr. Witham stated he agreed and added that he feels the request is reasonable. He added that he is often hesitant about 0' setbacks; however, if the abutters are happy with the petition then he is also happy. This is a reasonable request.

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

.....

III. AJOURNMENT

There being no further business to come before the Board, the Board acted unanimously to adjourn and reconvene on April 23, 2002 to complete the Agenda.

Respectfully submitted,

Joan M. Long
Secretary

/jml