

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

7:00 P.M.

May 21, 2002

MEMBERS PRESENT: Chairman, Jack Blalock; James Horrigan; Bob Marchewka; Alain Jousse, Chris Rogers; Nate Holloway; and, alternate, David Witham

MEMBERS EXCUSED: Vice-Chairman, Charles LeBlanc,

ALSO PRESENT: Lucy Tillman, Planner I

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Let the record reflect that Mr. Rogers had not yet arrived.

I. Approval of Minutes

Mr. Holloway made a motion to accept the minutes from the meetings of April 16, 2002 and the reconvened meeting of April 23, 2002; Mr. Jousse seconded and was approved unanimously with a 6 – 0 vote.

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Let the record reflect that Mr. Rogers arrived.

II. Old Business

A) Request for a Motion for Reconsideration for Susan Turner, owner for property located at 111 Wibird Street. Said property is shown on Assessor Plan 134 as Lot 046 and lies within the General Residence A district.

Let the record reflect that Chairman Blalock passed the gavel to Mr. Marchewka.

Mr. Horrigan made a motion to grant the Motion for Reconsideration; Mr. Blalock seconded. Mr. Horrigan stated there are two items that a motion for reconsideration can be considered; the first being whether there is new information being presented that was not considered at the original public hearing or whether the Board made a procedural error during their deliberations. The petitioner was unaware that a letter had been submitted to Board members from abutters on Lincoln Avenue in opposition; therefore, we should grant the rehearing to allow the petitioner an opportunity to respond to the letter. Mr. Blalock feels strongly that this request should be granted and for the same reasons as stated by Mr. Horrigan. The Board members did have the letter in their packets; however, it was clear that the applicant was not aware of the letter; therefore, for the sake of fairness, the request should be granted.

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

1) **Petition of Lawrence N. & Ruth S. Gray, owners**, for property located at 80 Currier's Cove wherein a Variance from Article III, Section 10-301(A)(7) is requested to allow 8' x 14' deck 67' from the edge of the salt water marsh/wetlands and 312 sf of enclosed living space within 100' of the edge of the salt water marsh/wetlands. Said property is shown on Assessor Plan 204 as Lot 14 and lies within the Single Residence A district.

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernard Pelech, representing the owners, stated that this property should be familiar since it was before the Board in February of 2002 and the application was denied. The applicant received a Wetlands Permit from the State of New Hampshire Environmental Services for the project on March 1st. This approval was based on a finding that the project was within a previously developed upland tidal buffer area. The DES further made a finding that the proposed application meets the criteria for a project under the DES Wetlands Bureau Code of Administrative Rules.

Attorney Pelech added that on April 16th, the Board of Adjustment granted a request for a rehearing which based their decision on the Wetlands approval. The applicants are seeking a Variance for relief because the Ordinance prohibits structures within 100' from the salt-water marsh wetlands.

Attorney Pelech then addressed the criteria for the project adding that to grant the Variance will not be contrary to the public interest because the proposed construction for the deck will be built on sona tubes over the existing lawn area and the existing deck will be enclosed living space over an existing lawn area. The impact of the construction in the buffer zone will in no way impact that area. Attorney Pelech stated that when the residence was constructed in 1987, it pre-dated the enactment of the Zoning Ordinance; therefore, this restriction does in fact interfere with reasonable use of the property. The applicant's request would be allowed without the stipulation of the 100' buffer zone. The majority of existing homes in this area lie within the 100' buffer zone. He added that no fair and substantial relationship exists between the general purpose of the Zoning Ordinance and the specific restriction as applied to this piece of property in Article III, Section 10-301A)(7) was enacted after the construction of the home. Most of the 100' upland buffer zone was disturbed and developed at the time the Ordinance was enacted. The buffer zone was disturbed by landscaping, grade alterations, and vegetation removal in the area surrounding the home. Attorney Pelech added that because the property was developed prior to the enactment of the Ordinance, the area in question is now a lawn and has lost the qualities that the buffer zone ordinance wishes to protect; therefore the request to enclose the existing deck and construct a new deck over the previously disturbed lawn area will in no way negatively impact the wetlands buffer zone.

Attorney Pelech stated that to grant the Variance would not injure the public or private rights of others because there are no access easements, view easements or rights of the public upon or in close proximity to this property. He stated the Variance is consistent with the spirit and intent of the Ordinance because the area has little habitat value, buffering value or vegetative cover. Substantial justice will be done to grant the Variance because if the Variance is denied, it would outweigh any benefit to the general public in denying the Variance because the upland area had been previously developed and disturbed. Attorney Pelech added that since there is no benefit to the public interest to deny the Variance, the hardship on the owner cannot be outweighed since the hardship is substantial. There will be no diminution to surrounding property values to

allow the application to be granted because there have been no abutters to speak in opposition. The work will be done tastefully and will not have an adverse affect on the views, esthetics, or property values of surrounding properties.

Attorney Pelech presented a photograph of an existing flagpole on the property that his client has indicated that he would be happy to comply with if a stipulation was made to remove it.

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

SPEAKING IN OPPOSITION TO THE PETITION

Mr. Alan Sturgis, the Chairman of the Conservation Commission, stated the Commission is charged with safeguarding the natural resources of Portsmouth and the Commission recommends denial of the requested Variance. The Ordinance states that no structure will be built within 100' of the buffer zone. The applicants received approval to build a new garage from this Board and use the old garage for additional living space; however, this was not a threat to the buffer zone. This request is a different story and he added there will be no hardship to the owners to deny the request to construct a new deck because it will be an incursion onto the water and wetlands since there is an existing deck that can be used.

Chairman Blalock asked Chairman Sturgis if he would elaborate on the fact that that the State DES gave approval for this application, why did the Conservation Commission recommend denial? Chairman Sturgis replied that the ball was dropped and added that for the same reasons that he just gave for denying this application, should have been given at their meeting. Our vote was 4 – 3 to deny the recommendation.

Attorney Pelech stated he was given no notice of the Conservation Commission meeting. The proposed garage is 4' closer to the wetlands. The deck is 1/5 the size of the approved garage and the deck is 67' from the wetlands. Chairman Blalock replied the only thing that was in front of the Board at this time is a letter of February 14, 2002 from Mr. Sturgis of the Conservation Commission. He added that this Board does not make a practice of setting a precedent.

Mr. Sturgis replied that it has been the Commission's practice that if we have an interest in an application coming before the BOA, we send a letter to the Board members addressing our concerns.

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. Holloway seconded for discussion. Mr. Rogers stated he feels the wetlands buffer zones are important. He agrees that the sona tubes are small and will not affect the filtration system; however, the problem is that the wetlands regulations came along and the applicants request for the deck will be unbuildable. It is unfair the owners were told that because of the new regulations your request should be denied and this presents a hardship. The request is not a large change and seems convoluted. Mr. Holloway stated he seconded for discussion purposes only.

Chairman Blalock stated that anything that infringes on the wetlands is serious. He visited the property and was shown where the sona tubes would be placed and agreed it would be minimal

and he added that there would not be any major disturbance to the lawn and is therefore, grantable. The State agrees with his thoughts. The five criteria have been met and we should allow the applicant to complete their project.

Mr. Horrigan stated he will not support the motion and supports the comments made by Mr. Sturgis, the Chairman of the Conservation Commission that there will be fresh water run off into the salt-water marsh. We approved the garage at a previous meeting; however, the 100' buffer zone should be protected and added that once this is lost; we will never get it back. The State did approve this application; however, they only require a 50' buffer and the City requires a 100' buffer.

Mr. Jousse stated he agreed with Mr. Horrigan's comments and he added that he failed to see the hardship since the construction will encroach into the wetlands area; therefore, this application should not be supported.

Mr. Witham stated he will not support the motion, although he agrees the impact of the sona tubes will be minimal

The motion to grant failed with a 3 – 4 vote with Mr. Jousse, Mr. Horrigan, Mr. Witham, and Mr. Holloway voting in the negative.



2) Petition of ONB Realty Corporation, owner, and Chittenden Bank, applicant, for property located at 1555 Lafayette Road wherein the following are requested: 1) a Variance from Article II, Section 10-207(24) to allow an existing temporary structure to remain for an additional twelve months from the required date of removal where temporary structures are allowed for up to 30 days, 2) a Variance from Article III, Section 10-301(A)(8) to allow: a) 32.15' x 65' 1½ story bank building including a 5.5' x 18' entrance canopy on the right side and a 35.33 x 44' Drive-Thru Canopy on the left side with a 72' front yard, and b) a 50' x 170' business office/professional building with a 76.7' front yard where 105' is the minimum required in both instances, 3) a Variance from Article XII, Section 10-1201(A)(3)(c)(1) to allow vehicle accessway and parking within 50' of a residential zone where such use is not allowed; and, 4) a Variance from Article V, Section 10-504(B)(2) to allow a 6' solid board fence along a portion of the southerly boundary line where an 8' solid board fence is required along the entire southerly boundary line. Said property is shown on Assessor Plan 251 as Lot 125 and lies within the Mixed Residential Business district.

SPEAKING IN FAVOR OF THE PETITION

Attorney Pelech, representing the owner and the applicant, stated this property should be very familiar to the Board members since it has been before the Board previously on many occasions seeking relief. He stated the ONB Bank has been purchased by the Chittenden Bank. The proposed structure will be no closer to Lafayette Road than what was approved at the May 21, 2002 Board of Adjustment meeting. The abutter on the southerly section of the property has asked for this stipulation so he can see traffic when backing out of his driveway. Attorney Pelech stated the 50' setback is critical and the property will still be screened from the residential homes. The proposed building will be over 200' from Lafayette Road and will be 76' from the rear property line of the Exxon gas station. The last Variance being proposed is to allow the existing structure to remain for another 12 months; however, once the bank is constructed, the trailer will be removed. Most of the site work has been done and the hardship

in this case is because the property is ell shaped. The spirit and intent of the Ordinance will not be broken to grant these Variances since the bank has been at this location for some time. The proposed use is a low impact use and is much less intense than what could be allowed. Nothing has been changed from what was approved a year ago. Attorney Pelech asked that the Board look favorably on the request.

Attorney Pelech stated he had no issues with the memo that the Planning Department had written and given to the Board members regarding the property.

Chairman Blalock asked if the temporary trailer on the property is used for bank service for their customers? Attorney Pelech replied that was correct and added that it is not a construction trailer.

Mr. Rogers asked how the 105' setback from Lafayette Road would be affected? Attorney Pelech replied that this property would not be affected by the setback; however, the Exxon station to the front would be affected if further widening of Lafayette Road becomes necessary.

Mr. Horrigan stated he would like to revisit the fence issue. Attorney Pelech replied that an abutter has requested that the solid 6' fence along the southerly property line, stop at the abutters garage to allow the abutter on Lafayette Road site vision when exiting his driveway and he added that the bank would be happy to plant low shrubbery at the point where the fence is being removed to the street.

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; Mr. Rogers seconded. Mr. Jousse stated this application is essentially the same as what we had before us previously and was approved. He added he would like to see this project finished eventually and we have the opportunity to move forward. Mr. Rogers agreed and added if the widening of Route 1 is anticipated again, the Exxon gas station will have to be moved.

Mr. Horrigan stated he would like to incorporate the following stipulations into the motion:

- That the solid 6' fence along the southerly property line stop at the abutters garage to allow the abutter on Lafayette Road site vision when exiting his driveway;
- That low vegetation be placed between the end of the fence to Lafayette Road to delineate the property line; and,
- That the fence and vegetation be approved by Site Review.

Both the maker of the motion, Mr. Jousse and the second, Mr. Rogers agreed to the stipulations.

Chairman Blalock stated he agreed that this was a grantable request and added that he appreciated the bank working with the abutters and hoped that the application would finally be completed.

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



3) 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) and Article IV, Section 10-401(A)(2)(c) are 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, b) a 21.5' front yard where 30' is the minimum required; and, c) 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.

SPEAKING IN FAVOR OF THE PETITION

Ms. Kathryn Lynch, an owner of the property, stated they were proposing to add another garage bay to their two garage onto the right side of the house that will also provide a space for storage that is very much needed. This extra bay will provide for another garage space for their son to park his car inside. She stated that they had tried many, many plans to add this extra garage bay so as not to require relief from the Ordinance; however, nothing was workable. We have to come back next month to request an Equitable Waiver since we realized that the house did not sit on the property correctly.

SPEAKING IN OPPOSITION TO THE PETITION

Ms. Gerry Sullivan, a direct abutter and most affected by the addition, stated the garage will encroach onto her property and because it is so close, the applicant would be able to look directly into her house and would result in a diminution to her property values.

Mr. Mike Sullivan, Ms. Sullivan's son stated he also felt that this encroachment onto his mother's property was too great. He added that his mother purchased this house in 1979 and has been friends with the Andelman's since that time. There has been no proven hardship that a three-car garage is needed. He added that his mother has worked two jobs just to make ends meet and be able to pay her taxes.

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

DECISION OF THE BOARD

Mr. Witham made a motion to deny the application as presented and advertised; Mr. Rogers seconded. Mr. Witham stated the abutters' comments make good sense. The property owners have a two-car garage that demonstrates this is ample and reasonable use of the property as it exists. A three-car garage is above reasonable use of the property. Mr. Rogers stated he agreed that there is reasonable use of the property as it exists. It is important that abutters come to these meetings to voice their opinions on applications. There will be an encroachment onto the abutters' property and will cause a diminution to the abutters' property values.

Chairman Blalock stated this motion does make sense for the adjacent abutter and is concerned about the encroachment onto their property. To grant the application will cause a diminution to the abutter's property values and we have to protect the abutters. The addition needs to be reconfigured.

Mr. Jousse stated he will not support the motion because he feels the request is minimal.

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

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4) Petition of New England Industrial Properties, owner, VIP Auto Center, applicant, for property located at 2179 Lafayette Road wherein the following are requested: 1) a Special Exception as allowed in Article II, Section 10-208(36) to allow two additional service bays in an existing building; and, 2) a Variance from Article XII, Section 10-1203(A)(2) to allow the existing interior loading area to be a shared use as a service bay. Said property is shown on Assessor Plan 268 as Lot 98 and lies within the General Business district. Case # 5-3

SPEAKING IN FAVOR OF THE PETITION

Mr. James Brochu, representing VIP Auto Center, stated they have 52 locations that do the same things that we want to do at the Portsmouth location. We want to add two additional service bays having two additional bay doors. Freight is delivered every day except on weekends; therefore, the need for the loading area that will also be used as a service bay.

Mr. Horrigan asked the location of the two additional service bays? Mr. Brochu replied they will be located inside the existing building. Mr. Brochu stated out of the existing 52 locations, only five do not have service work, only work related to tires. He stated that this location is not very busy and we are hoping that the two additional bays will improve the situation.

Mr. Jousse stated he wanted to make a comment that he noticed the parking spaces need to be repainted and restriped. Mr. Brochu replied that he was aware of this and that this work will be completed during our renovations.

FURTHER SPEAKING TO THE PETITION

Mr. Robert Brookhouse, an abutter located behind the VIP Auto Center, asked if there would be changes to the size of the building and added he was concerned that there may be excess lighting, or noise and he wanted to know the hours of operation that may affect the neighborhood. He was concerned about the PA system and wanted to hear the Board's comments.

Mr. Brochu replied there will be no changes in the outside lighting; that the hours of operation would remain the same being 7:00 a.m. to 7:00 p.m. Monday thru Friday; on Saturday's 7:00 a.m. to 6:00 p.m.; and on Sundays we will be open at 9:00 a.m. to 4:00 p.m.. There will be no expansion of noise and there will be no additional equipment added to cause any loud noises; and he added that there is no PA system at this location or are we anticipating installing one.

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

DECISION OF THE BOARD

Mr. Rogers made a motion to grant both the Variance and Special Exception as presented and advertised; Mr. Marchewka seconded. Mr. Rogers stated there are service bays existing already and to add two additional bays will only require that the inside walls be reconfigured. There will be no diminution to surrounding property values created to allow this application. There will be no additional services required from the City. Mr. Marchewka stated this is a logical expansion for the property; therefore, this request can be granted.

Chairman Blalock stated he feels there should be a stipulation to the motion as follows:

- That there be no increase in the hours of operation;
- That the outside lighting remain the same;
- That there be no increase in the noise level; and,
- That the overhead service bay doors be kept closed.

Chairman Blalock stated that these stipulations are important because it is not fair to inflict more noise on the neighborhood.

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



5) Petition of Lucas Kolm, owner, for property located at 35 Mark Street wherein the following are requested: 1) a Variance from Article III, Section 10-303(A) and Article IV, Section 10-401(A)(2)(c) to allow a 12' x 14' two story addition with a 5.75' rear yard where 15' is the minimum required; and, 2) a Variance from Article IV, Section 10-402(B) to allow a 22' x 26' 1½ story garage with a 4' rear yard and a 4' left side yard where 11.25' is the minimum required. Said property is shown on Assessor Plan 116 as Lot 50 and lies within the Mixed Residential Office and Historic A districts. Case # 5-4

SPEAKING IN FAVOR OF THE PETITION

Ms. Anne Whitney, the architect for the project, stated that her client has spoken with his abutters and they had no objection to the application and they had signed a petition to reflect this which was presented to the Board members. The only available parking for this particular lot is on the street. The lot is a double lot and has a beautiful garden. The owner wants to preserve the open space and the ornamental garden on the lot. The garage will allow for four vehicles to be off the street; however, the garage will create a 4' rear yard and a 4' left side yard setback. The garage will be 1-1/2 stories with a gable roof that will allow for storage on the second floor. There is a one-story addition planned on the existing structure and a small one-story ell will be removed to provide expansion of the existing kitchen.

Ms. Whitney stated that the Agenda indicates that the 12' x 14' addition is a two-story; however, she wanted to inform the Board that the addition will only be a one-story. The addition will not encroach any further on the existing setbacks.

Mr. Rogers asked about the side yard setback for the garage? Ms. Whitney replied there is a fence and there is no existing curb cut.

Mr. Horrigan asked if the trees at the garage site will have to be removed? Ms. Whitney replied that the trees will be preserved. There will be no plumbing facilities in the garage; however, there will be electricity.

Mr. Jousse stated if this application is approved where will the parked Winnebago on the lot be moved to? Mr. Kolm, the owner of the property, replied that it was there temporarily and will be removed as soon as construction has ended.

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 the two-story addition will be changed to a one-story addition; however, he stated he was concerned about the garage since there is only a few feet between the garage and the lot line; however, the proposed garage will not encroach any further on the existing setbacks. The yard is beautiful and the open space is important. If the abutters are not concerned then it is worthwhile to get the cars off the street. Mr. Marchewka stated he agreed and added that the owner has worked out any problems with his neighbors and after looking at the proposed plan, it is the only logical place for the addition and garage. Lot 049 will be the most affected by this proposal and they are in favor of the application.

Chairman Blalock stated he agreed and added it is a beautiful ornamental garden and agreed with Mr. Marchewka that the proposed location for the garage is the only place where it could be located. Chairman Blalock stated that when he was visiting the property, he spoke to a neighbor and they indicated that the lot will be very nice when it is done.

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



6) Petition of Anthony and Martha Rahn, owners, for property located at 3 Larry Lane wherein a Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) are requested to allow a 24' x 26' irregular one story addition including a 6' x 12' porch with: a) a 25' rear yard where 30' is the minimum required; and, b) 23.8% building coverage where 20% is the maximum allowed. Said property is shown on Assessor Plan 234 as Lot 38 and lies within the Single Residence B district. Case # 5-5

SPEAKING IN FAVOR OF THE PETITION

Ms. Rahn, an owner of the property, stated that after she received approval last year to build the addition, all she has done is change her mind about whether to go outback or to the side with the addition.

Mr. Steve Jones, the contractor for the project, stated the owners were before the Board a year ago to add an irregular shaped addition onto their home. During this time, they have decided to build back rather than to the side and not encroach any further onto the neighborhood.

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 the applicant did receive a approval for a Variance last year and now they are requesting to be allowed a more conforming addition and he added, there will be no encroachment to surrounding properties. The request is very minimal and will be less relief than what was granted previously. Mr. Jousse stated he agreed that the application will be more conforming than the application that was granted last year; therefore, this application should be approved.

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

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7) Petition of Gerald E. Eaton, Trustee of the Phyllis M. Martenson Revocable Trust, owner, for property located at 384 Lang Road wherein a Variance from Article III, Section 10-10-301(A)(9) is requested to allow the subdivision of a single residential lot into two lots with the non-developed residual lot having non-continuous frontage (294.21' and 37.85') with the actual access through the 37.85' section of frontage. Said property is shown on Assessor Plan 289 as Lot 8 and lies within the Single Residence B district. Case # 5-6

SPEAKING IN FAVOR OF THE PETITION

Attorney John P. McGee, Jr., representing the owner, stated this property has been in the family for a good number of years; however, given the Wetlands Ordinance, it would be impossible to build onto the lot without receiving relief from this Board. The lot consists of 10-1/2 acres; however, the front setbacks do not meet the City requirements because of the shape of the lot and because of the wetlands involved. All the requirements have been met to grant the application. There will be no diminution to surrounding property values and it is within the spirit and intent of the Ordinance. The old farm has an existing septic system as well as a new septic system. The applicant has received Planning Board approval pending approval from this Board.

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; Mr. Witham seconded. Mr. Horrigan stated there is a lot of standing water on the property although it has a narrow frontage. Mr. Witham stated all the criteria has been met and the application makes sense because the applicant could not come back and ask for a driveway to run through the wetlands area.

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

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

8) Petition of Philip Singer Revocable Trust, owner, CHI Engineering Services, Inc. applicant, for property located at 430 West Road wherein a Variance from Article II, Section 10-208 is requested to allow the use of 26,000± for fabrication and warehousing within a 36,000 sf building and outdoor storage and fabrication both associated with 10,000 sf of engineering office space. Said property is shown on Assessor Plan 267 as Lot 28 and lies within the Industrial district. Case # 5-7

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernard W. Pelech, representing CHI Engineering Services, stated the business is located in Greenland; however, they are anticipating a move to the Portsmouth area. The proposed property was built as an industrial type building in the General Business district. Abutting this property are the Office Research and Industrial districts and he added there will be no changes to the exterior of the existing structure. This property will also have professional

offices, which are an allowed use, and he added the proposed use is an appropriate type use for the Industrial district. Standard Plumbing and Heating was at this location previously and the property is now vacant. Attorney Pelech stated the only requirement that has not met is the fabrication that may be done outside the building; however, this would be a very rare occurrence and has only happened once during the past 13 years. He stated the proposed use would be appropriate for the facility and it will be a low impact to the area and will not create any additional traffic to the area. He added that all the criteria had been met to grant the application. There will be no diminution to surrounding property values and there has been no opposition from abutters regarding the application. The facility will be a 9:00 a.m. to 5:00 p.m. use and site Review approval will be required. Part of the proposed use is allowed and the building does not face on Lafayette Road. The private or public rights will not be affected to grant this Variance. No external changes to the building other than creating additional parking.

Mr. Horrigan asked if the outdoor storage would be a separate use. Attorney Pelech replied the fabrication part of the application is done within the building; however during the past 13 years, fabrication occurred once outside the building.

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. Rogers seconded. Mr. Horrigan stated that given the surrounding properties, there would be no fair and substantial reason to deny the application. The proposed use would be appropriate for this building. Mr. Rogers stated he agreed and added that the application meets the hardship test in the Simplex decision; therefore, this can be granted.

Chairman Blalock stated he also agreed and added that all the criteria has been met to grant the application and the use would be very appropriate for the West Road property.

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

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9) Petition of 1950 Lafayette Place, LLC, owner, and Portsmouth Casey Home Association, applicant, for property located at 1950 Lafayette Road wherein a Variance from Article II, Section 10-209 is requested to allow the construction of a 10,000+ sf footprint two story building for use as a function hall facility for rental to a fraternal organization for its meetings and functions and for rental to others as an accessory use on an as available basis in a district where such use is not allowed. Said property is shown on Assessor Plan 267 as Lot 7 and lies within the Office Research district. Case #5-8

SPEAKING IN FAVOR OF THE PETITION

Attorney Alec McEachern, representing the Portsmouth Casey Home, stated the Association was formed in 1923 as a holding entity to own real estate on behalf of the Knights of Columbus. Since 1995 they have been actively looking for replacement property and they have not been successful. This type of entity is allowed only in the Central Business B district because that is the only district that allows fraternal/service organizations as a permitted use. Attorney McEachern stated the building will be architecturally consistent with the surrounding properties. The existing vegetation will be maintained. During the Site Review process, a landscaping plan

will be submitted. Abutter's have indicated that they would prefer that the building be located to the front of the lot so as to obscure the parking lot. The entrance to the building will then be located on the west side of the lot.

Attorney McEachern stated the abutting properties to the North and South are zoned Office Research; to the West is zoned Industrial and to the East, across Lafayette Road is zoned Single Residence B.

Attorney McEachern stated there will be no diminution created to surrounding properties because the building will have a minimal impact on the area and with the stipulation that the entrance to the building be located on the west side of the lot will be less intense on the area. He added that the applicant is proposing this use to construct an assembly hall/function facility on property which will rent to the Knights of Columbus; however, when not in use by this organization, the applicant intends to rent the facility to others for functions and special events as an accessory use.

Attorney McEachern then addressed the criteria required to grant the Variance adding that it will not create a diminution to surrounding property values since the proposed site is a 2.3 acre parcel and has been approved for the construction of a two-building office complex containing 24,000 s.f. of office space with related parking areas. To the North of the site, there is a large tract of undeveloped O/R land; to the West is Industrial land; to the South is developed Office/Research land occupied by Service Credit Union and the Department of Employment Security; and, to the East, single family homes. Any increase in traffic will occur during the non-business hours and will not interfere with neighboring businesses. Granting the Variance will not be contrary to the public interest since it will further their goals by benefiting a group which has contributed to the community through its charitable activities.

Attorney McEachern stated the application meets the hardship test for a Variance in Simplex Technologies vs. Town of Newington in easing the overly restrictive definition of an unnecessary hardship. This application is perfect for his client because other potential sites lacked sufficient parking or required vehicles to travel through existing residential neighborhood to reach the site. The second Simplex test is whether any fair and substantial relationship exists between the general purposes of the zoning ordinance and restriction on the property. Currently, fraternal and service organization are only permitted in the Central Business B districts, which is the downtown area of Portsmouth and is no longer suited for this type organization due to congestion and lack of parking.

Attorney McEachern stated that to grant the Variance would not injure the public or private rights of others. This is the third Simplex element to meet the hardship requirements. The applicant is proposing to screen the site with appropriate landscaping and construct a building in a manner that conforms to the architecture in the Office/Research district. He added that the applicant plans to work with Planning Board in the Site Review process to address any noise issues. Attorney McEachern stated that to grant the Variance will not be contrary to the spirit and intent of the Ordinance since the proposed site has little or no impact on the abutting properties or on the City's resources.

Attorney McEachern stated that he feels all the criteria has been met to grant the Variance and asked the Board to look favorably on the application.

FURTHER SPEAKING IN FAVOR OF THE PETITION

Attorney Bernard Pelech, representing the owner, stated this site is by far the best site for the proposed use and he added it will be a much less intense use than what could be allowed. He stated that if he lived across the street from this site, he would much rather see this proposed use than anything else that could be allowed and he asked that the Board grant the application

Mr. Ed Lawrence, of Aldrich Road, stated he has been a member of the Organization for many many years and feels he is a better man for it. He feels that if the entrance to the lot is made narrower, allowing for only one vehicle to exit the property, will deter anyone from trying to enter the property at the same time.

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

DECISION OF THE BOARD

Mr. Chris Rogers made a motion to grant the application as presented and advertised; Mr. Marchewka seconded to include the following stipulations:

- That access from Lafayette Road be limited to "in" only;
- That the rear service road be extended to provide access to this site;
- That there be no outside dining/bar/entertainment area provided for the fraternal organization or it's lessee's; and,
- That the State Liquor Permit cannot be transferred to a new owner/entity if the property or shares in a holding entity are ever sold.

The motion to grant with the above stipulations passed unanimously with a 7 – 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 June 18, 2002 at 7:00 p.m. in the City Council Chambers.

Respectfully submitted,

Joan M. Long
Secretary

/jml