

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

7:00 P.M

SEPTEMBER 17, 2002

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

MEMBERS EXCUSED: Nate Holloway; Chris Rogers;

ALSO PRESENT: Lucy Tillman, Planner I

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Please Note: Petition (#2) of Marilyn M. Jones, Owner, for property located at 201 Echo Avenue was withdrawn until next month and Petition (#7) of Jocelyn Frechette and Gerald W.Howe, Owners, for property located at 45 Miller Avenue was withdrawn until next month for re-advertising purposes. Petition (#14) of Wren's Nest Motel Corp. Owner, for property located at 3548 Lafayette Road was withdrawn indefinitely.

I. APPROVAL OF MINUTES

A motion was made and seconded to accept the minutes from the meeting of August 20, 2002 and it was approved unanimously with a 6 – 0 vote.

Chairman Blalock announced that there were 6 voting members for the meeting. Two members were not present. Four votes would be required for a variance request, which is a majority. A tie vote would fail.

II. OLD BUSINESS

A, Request for Rehearing for Heron Realty Trust, Owner and Sean Correll, Applicant. Requested by Bernard W. Pelech, Esq. for property located at 917 Greenland Road. Said property is shown on Assessor Plan 259 as Lot 7 and lies within the Single Residence B District.

A written rebuttal was received from Sean Correll just prior to the meeting that the members reviewed.

Vice-Chairman LeBlanc moved that the Request be denied. Mr. Jousse seconded. Vice-Chairman LeBlanc did not feel that anything new had come up and the only error is the advertisement that the property was in the Single Business B District rather than Single Residence B District. Vice Chairman LeBlanc felt that all members were aware that it was a residential area and it was addressed in those terms when discussing the property. Mr. Jousse did not have anything to add to Vice-Chairman's LeBlanc's statement. Mr. Horrigan indicated that he was not going to vote for the motion because of the advertising problem as he was unsure how the abutters interpreted the notice and therefore felt that it should be re-heard on that basis. Chairman Blalock stated that he agreed with Vice-Chairman LeBlanc as a large number of the abutters signed a Petition that showed that they knew what the proposal was and were well informed and therefore he would be supporting the motion.

The motion to deny the Request for Rehearing was passed with a 4 - 2 vote, with Mr. Horrigan and Mr. Marchewka voting in the negative.



B. Request for Rehearing for Dana W. Pratt, Owner. Requested by Bernard W. Pelech, Esq. for property located at 410 Islington Street. Said property is shown on Assessor Plan 145 as Lot 134 and lies within the Mixed Residential Business District.

Vice-Chairman LeBlanc moved that the Request be denied. Mr. Horrigan seconded. Vice-Chairman LeBlanc stated that all of the issues in the Request for Re-hearing were discussed at the original hearing. There was nothing new that was not available at that time and no errors were made in deliberations. Mr. Horrigan indicated that he voted for the original petition but that he agreed with Vice-Chairman LeBlanc and did not see any procedural errors or any new evidence in the Petition. Chairman Blalock felt that the Board may have responded to an item in the testimony about a stipulation put on the property sometime ago, when things were a little less formal, that the property remain a single family dwelling but that does not preclude them from seeking a variance and Chairman Blalock felt that may have unduly swayed the Board and may have caused an error in the Board's decision.

The motion to deny the Request for Rehearing was passed 4 - 2, with Mr. Marchewka and Chairman Blalock voting in the negative.



Chairman Blalock re-stated for people who had just arrived that Petition #2 had been withdrawn until October and Petition #7 had been withdrawn until October and Petition # 14 had been withdrawn indefinitely.

III. PUBLIC HEARINGS

1) Petition of Heads Up Real Estate Group, LLC, owner, for property located at 97 Chestnut Street wherein the following are requested: 1) a Variance from Article II, Section 10-207 to convert a former physician's office to a one bedroom apartment on a 1,841 sf lot where a total of 3,000 sf is required, and 2) a Variance from Article XII, Section 10-1204 Table 15 to allow no parking spaces to be provided where six parking spaces are required. Said property is shown on Assessor Plan 116 as Lot 25 and lies within the Mixed Residential Office district.
Case # 8-11

SPEAKING IN FAVOR OF THE PETITION

Attorney John Bosen, who was representing Neil Robbins and Michael Brown, the owners of Heads Up Real Estate, spoke on their behalf. Attorney Bosen stated that what makes this proposal unique is that the property has a pre-existing non-conforming use and he is asking that this use continue but to a lesser degree. Prior to the zoning change in 1995, this property was in the CBD district but after the 1995 zoning change it was changed to the MRO district and the property both before and after the 1995 zoning change had a residential unit upstairs. Their request only involves the downstairs that is currently a Hair and Nail Salon and was the home of Dr. Robbins medical office, making two commercial uses, both grandfathered pre-existing non-conforming. They are seeking to convert Dr. Robbins office to a single apartment. Detailed plans have been submitted. The first page is a copy of the city's property map, second, third

and fourth pages are photographs of the property, the fifth page is the relevant floor plan of the conversion of Dr. Robbins medical office, the sixth and seventh pages are floor plans of the existing downstairs Hair Salon and the last page is the site plan.

The entire premise and justification of their request is the fact that they are requesting less relief than what is already grandfathered. The ordinance requires 1500 sf of lot area for a dwelling. They have two dwellings so they would need 3,000 sf and only have 1,841 sf and are deficient but this is a far less intense use of the property than the pre-existing use. The same is true with respect to the parking request. As a physician's office there is a requirement for 1 parking space for every 200 sf and there are 600 sf in this unit so there would be a requirement under the medical office for 3 parking spaces. As a residential unit they are only required to have 1 1/2 spaces. There would be no diminution of the property values, they are not changing the outside façade of the building in any way and there are no known objections from abutters. Three letters have been received from abutters stating they do not object to this request provided there are no off street parking stalls being eliminated. Granting the petition would benefit the public, as there is a need for housing downtown. Granting of the petition would also do substantial justice because the use would have less impact than the former use. Use is not contrary to the spirit and intent of the ordinance as the one bedroom proposed use is a permitted use wherein the doctor's office is not a permitted use.

Vice-Chairman LeBlanc asked how much the hair salon took up on the 1st floor and Attorney Bosen responded that it appears to take up one half of the downstairs. Vice Chairman LeBlanc asked if there is an apartment on the second floor and Attorney Bosen indicated that an apartment has been on the 2nd floor for a number of years.

Mr. Horrigan asked for clarification on the lay out of the units and where the staircase to the second floor was. Attorney Bosen indicated that there is an existing common hall and the staircase was omitted from the floor plan but there is no change to that staircase. Owner Neil Robbins addressed the entrance question. He indicated that there is a separate entrance to the doctor's office and there is another front entrance to the apartment upstairs.

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

DECISION OF THE BOARD

Mr. Marchewka made a motion to grant the petition as presented and advertised; Vice-Chairman LeBlanc seconded. Mr. Marchewka stated that this Petition is requesting a change in use but the character of the building isn't changing. The use going forward will continue the mix of business/commercial and will actually be a less intensive use and a less non-conforming use of the property. Mr. Marchewka stated he felt it was a reasonable request and should be granted. Vice-Chairman LeBlanc stated that because the intensity of the property is going down, there will be less traffic to the property which is definitely to the public interest and the lot is very small with the building covering practically the whole lot which was put in way before the Board was started and for those reasons the Board should grant this variance.

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



2) Petition of Marilyn M. Jones, owner, for property located at 201 Echo Avenue wherein a Variance from Article III, Section 10-304(A) is requested to allow a 9'4" x 36' plant/pool room with a roof deck above with a 24' left side yard where 30' is the minimum required. Said property is shown on Assessor Plan 237 as Lot 57 and lies within the General Business district. Case # 9-1

Petition withdrawn until October meeting.



3) Petition of Heather Geraci-Cole and Jason Cole, owners, for property located at 246 Holly Lane wherein a Variance from Article III, Section 10-302(A) is requested to allow a 32' x 34' two story single family dwelling on a nonconforming lot having 8,812 sf of area where 15,000 sf is the minimum required after the demolition of the existing single family dwelling. Said property is shown on Assessor Plan 261 as Lot 47 and lies within the Single Residence B district. Case # 9-2

SPEAKING IN FAVOR OF THE PETITION

Jason Cole, owner, stated that the house was not in good shape and photos were passed around for the Board to review. The neighborhood is fairly tight and small and most houses in the area have been through some construction. Mr. Cole wants to put in a small cape and keep it small with a small roofline. Photos of recent construction in the neighborhood were also passed around to the Board. Mr. Cole and his wife talked to all of their abutters and no one was opposed to what they were doing. There are so many things wrong with the house that they need to start fresh. They have put together what they think is a reasonable solution to keep everybody happy and not get too big for the lot size.

Mr. Jousse asked what the present size of dwelling was? Mr. Cole responded that it was 24 X 26.

Mr. Marchewka asked whether they are asking for a variance for lot size only. Ms. Tillman confirmed that that was correct. As opposed to keeping the structure and putting an addition on to it, he is suggesting that the Board let them tear down that structure and rebuild on a non-conforming lot area.

Vice-Chairman LeBlanc asked whether Mr. Cole already had an application for a demolition permit that is on the front of the house. Mr. Cole indicated that he does and there have not been any complaints in the neighborhood. The house will come down pretty fast.

Chairman Blalock stated that abutters Leslie Cray and Dan Gilmore from 188 Holly Lane did inform the Planning Department that they are supportive of the petition.

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

DECISION OF THE BOARD

Mr. Jousse proposed that the Board grant the variance as presented and advertised. Mr. Witham seconded. Mr. Jousse stated that he sympathizes with the applicant and believes the applicant is doing the right thing. The hardship exists on the pre-existing size of the lot. For the good of everybody Mr. Jouse felt that the variance should be granted. Mr. Witham agreed with Mr. Jousse and added that there is no service to the community by trying to have this individual fix up this home and add to it in any way.

Chairman Blalock added that it might seem that Mr. Cole is lacking a lot of lot area. If the Board denied this request the Board would be forcing him to renovate the house which per state law is

"needless and unnecessary restriction" and would be causing him great harm with very little effect to the City of Portsmouth. Therefore, Chairman Blalock not only thought they should grant it but that they must grant it.

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

4) Petition of Tom Watson and Cathy Salisbury, owners, for property located at 200 Newcastle Avenue wherein a Variance from Article III, Section 10-302(A) is requested to allow a 5' x 9'5" one story addition to the left side with a 27' front yard where 30' is the minimum required. Said property is shown on Assessor Plan 207 as Lot 50 and lies within the Single Residence B and Historic A districts. Case # 9-3

SPEAKING IN FAVOR OF THE PETITION

Anne Whitney, the architect on the project, stated that they are proposing adding a small addition. On the back of the house are 2 small ells. They would take one of those and extend it against the existing building and by adding 5' X 5.9' s.f. They would be able to create quite a bit of room in the existing structure. The existing front of the house is within 10' of the front yard, as are most of the houses along Newcastle Avenue. This addition really affects the side yard but by measuring from the front, a variance is needed. Ms. Whitney stated that both of the ells are on the back and they are going to be bringing this to the Historic District Commission. The addition would improve the appearance of the house.

Vice-Chairman LeBlanc asked for clarification regarding the two ells around the back of the house. Ms. Whitney pointed out on the site plan where the 2 ells exist and clarified where the addition would go. Vice Chairman Leblanc further asked about the roof and whether it would be just below the window on the second floor. Ms. Whitney stated yes.

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

DECISION OF THE BOARD

Mr. Horrigan made a motion to grant the request as presented and advertised. Mr. Marchewka seconded. Mr. Horrigan stated that very minimal relief is being requested and the addition does not really extend the non-conformance of the house from the 30' minimum setback. Mr. Horrigan stated that he saw no reason to deny this renovation as the exterior will look much the same as before. Mr. Marchewka stated that he agreed as it is a very minimal request and it is very typical of the older houses and lots that one sees in the South End that are built in the corner of the lot and the hardship really lies in the way the house is situated on the lot.

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



5) Petition of Frederick S. Gray Jr., owner, for property located at 808 Sagamore Avenue wherein a Variance from Article III, Section 10-302(A) is requested to allow a 22' x 22' garage including an attached 8' x 14' shed with a 6' rear yard where 30' is the minimum required. Said property is shown on Assessor Plan 223 as Lot 14 and lies within the Single Residence B district. Case # 9-4

SPEAKING IN FAVOR OF THE PETITION

Fred Gray, property owner of 808 Sagamore Avenue, stated that the only place that he could put the proposed garage and workshop is where he requested. There was another area where he wanted to put it but was told that it would cost thousands of dollars just to blast out the ledge and he was afraid that something might happen to his house or the ledge. Between the house

and the proposed garage is a septic tank and leach field and so it is not possible to build on top of that section.

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

DECISION OF THE BOARD

Vice-Chairman LeBlanc made a motion to grant the petition as presented and advertised. Mr. Horrigan seconded. Vice-Chairman LeBlanc stated that this is classic case of hardship in that the lot is covered with ledge and there are problems that could arise from blasting to other properties which would diminish their property value, that the septic system and leach field prohibit building on a large part of the lot. This shows the hardship and the Board can grant this petition. Mr. Horrigan agreed with Vice-Chairman LeBlanc that this is a classic case of hardship with a lot where it almost dictates by its very nature that this is the only location where the garage could be located. Also, a rear set back problem is being dealt with and there is considerable vegetation on both Mr. Gray's lot and the abutter's lot that will help diminish any possible visual impact on the garage.

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



6) Petition of ONB Realty Corporation, owner, and Chittenden Bank, applicant, for property located at 1555 Lafayette Road wherein a Variance from Article III, Section 10-301(A)(8) is requested to allow a 32' x 65' 2 story bank building including a 6' x 18'9" entrance canopy on the right side and a 36' x 28' Drive-thru canopy on the left side with a 72' front yard where 105' is the minimum required. Said property is shown on Assessor Plan 251 as Lot 125 and lies within the Mixed Residential Business district. Case # 9-5

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernard Pelech, Attorney for ONB Realty Corporation and Chittenden Bank, stated that they were before the Board in May and received the same variance that they are requesting this evening however they are now requesting to build a two story building, rather than the one and a half story building that was approved in May. Otherwise the footprint of the building does not change, only the height of the building changes. One of the canopies has increased by less than a foot but it does not affect the setbacks. Lafayette Road is burdened at that point with a 105' front yard setback requirement. Due to the depth of the lot and the fact that there was an existing building and as there are many buildings in that area on both sides of this site within the 105' setback, the ordinance does interfere with a reasonable use of the property. The old bank building that has been demolished was much less than 105' from Lafayette Road. Attorney Pelech stated that he does feel that there is a hardship that results from the imposition of the ordinance and does not bear a fair and substantial relationship when it's applied to this lot.

The history of the 105' setback goes back to when the State was anticipating a widening of Route 1. In 1990 they came out with the initial widening plan which called for 5 lanes down Lafayette Road. This section of road has been widened and brought up to the standards required in the "2000 Plan of the NH DOT". No future widening at this point is anticipated in any future NHDOT Plans. Therefore, the 105' setback does not bear a fair and substantial relationship to this piece of property.

The third criteria is that no private or public rights are interfered with and the granting of this variance would not interfere with any public or private rights. Diminution of value of surrounding properties will not occur if this is granted. The 2-story building would actually be more architecturally pleasing than the 1 1/2-story building. The granting of the front setback relief requested will not affect property values of surrounding properties.

The next criteria is whether substantial justice would be done by granting the variance and weighing the hardship of the owner if the variance is denied against the benefit to the general public in denying the variance. The 2-story building is a more attractive building and probably more appropriate to that location. Therefore, the balancing test is not going to show that the benefit to the general public in denying this variance is going to outweigh the hardship on the owner.

The fourth criteria is whether this is going to be contrary to the intent and spirit of the ordinance. The spirit and intent of the ordinance is, as previously indicated, a 105' setback established many years ago which provided for the future widening of Route 1 at that location. There certainly has been substantial widening at that location yet there will still be a 72' setback that will provide for future widening if that should happen. The Board should recall the gas stations, the car wash, and Pizza Hut down on Lafayette Road that have received a variance and they were required to grant a 12' widening easement to the NHDOT and that is not the case in this area. So, the spirit and intent of the ordinance is not going to be in any way violated by granting this ordinance.

Finally, getting back to being contrary to the public interest, Attorney Pelech stated that he does not believe that the difference between 2 stories and 1 1/2 stories is going to negatively impact public interest but rather will benefit public interest. Attorney Pelech informed the Board that Dennis Moulton of Millette, Sprague and Coldwell, who did the plans, was present and could answer any further questions. Also, representatives of the Chittenden Bank were also present.

SPEAKING IN OPPOSITION TO THE PETITION

Mr. Dean Mularoni, of 33 Wilson Road, who is a direct abutter, stated that he did not feel that the Board should grant the additional space due to additional congestion that the bank will cause due to employee traffic and customer traffic. Mr. Mularoni also stated that he felt the building will be an eyesore, contrary to the bank's feeling that it will be a beautiful building. He felt it would be an eyesore from his back yard. Mr. Mularoni felt that it would further depreciate his land value because if anyone is interested in his real estate they are not going to want a bank in their backyard. Also, he hoped that the Board would consider that if they grant this to Chittenden Bank, who is to say 5 years from now the bank won't come back and want an even bigger building. Mr. Mularoni hoped that the Board would keep the applicant within the boundaries that have already been established.

REBUTTAL

Attorney Pelech stated that he does not believe Mr. Mularoni is an abutter and the map does not show the building as being in his back yard. Attorney Pelech did not feel that the Wilson Road residences are in the back yard of this building but asked if Mr. Mularoni would like to show where his property is to clarify.

Mr. Mularoni pointed out where his residence was on the map and did confirm that he is a direct abutter.

Chairman Blalock asked Attorney. Pelech what the difference in height would be. Attorney Pelech indicated that he did not have the exact figures but it appears to be 8' - 10'.

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

DECISION OF THE BOARD

Vice-Chairman LeBlanc made a motion to grant the petition as presented and advertised with the same stipulations that were granted back on May 21, 2002 for: 1) a 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; 2) That low vegetation be placed between the end of the fence and Lafayette Road to delineate the property lines; and 3) that the fence and vegetation be approved by Site Review. Chairman Blalock clarified that it was Vice Chairman LeBlanc's intention that those stipulations were to be exactly as were included in the May 21, 2002 meeting.

Vice Chairman LeBlanc also stated that he believed they made representation at the time that they were going to keep the vegetation along the southerly side of the property and he would like to also make that a stipulation.

Mr. Jousse seconded. Vice-Chairman LeBlanc stated that the criteria needed was gone over the last time and they are seeking to add 10' to 12' to the height of the building and with the screening that is being put in place, it should alleviate the major problems of having that large structure on the property and felt that the Board could grant the request. Mr. Jousse stated that this is essentially the same proposal that was granted earlier this year with the exception that they are going forward with a full store rather than a story and a half. If the plan is not approved, they can essentially build a story and a half building that is approved already. Doing a two-story building is probably more pleasing to the surrounding property and better use of the property for the applicant.

Motion to grant passed unanimously, with stipulations, with a 6 - 0 vote.

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7) Petition of Jocelyn Frechette and Gerald W. Howe, owners, for property located 45 Miller Avenue wherein a Variance from Article III, Section 10-302(A) is requested to allow a 9' x 17' one story addition to the dining room creating 28.7% building coverage where 25% is the maximum allowed. Said property is shown on Assessor Plan 129 as Lot 21 and lies within the General Residence A district. Case # 9-6

Petition withdrawn until October meeting.

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8) Petition of Paul Messier, owner, for property located 97 Richards Avenue wherein a Variance from Article III, Section 10-302(A) is requested to allow an 18' x 18' one story garage with: a) a 1' rear yard and 1' right side yard where 10' is the minimum required for both, b) 51% building coverage where 25% is the maximum allowed; and, c) 19.5% open space where 30% is the minimum required. Said property is shown on Assessor Plan 128 as Lot 9 and lies within the General Residence A district. Case # 9-7

SPEAKING IN FAVOR OF THE PETITION

Paul Messier, owner of the property, stated that he has a very small lot and they have a real problem with snow removal. At the present time he has four parking spaces and he wishes to cover 2 of them. He has a non-conforming lot and he wishes to locate the garage one foot from the back and one foot from the side property. He spoke with the owner to the south, Mr. Peterson, and he has no problems whatsoever. Last fall Mr. Messier had a petition before the Board to build a much larger mother-in-law suite and garage but in the spirit of being a good neighbor he withdrew that Petition and has considerably downsized this project and moved it from one property line to the other. Mr. Messier states that his hardship is the snow removal and he and his wife would like to go to work early in the morning without shoveling a lot of heavy snow.

Mr. Messier clarified that the photographs that he submitted are from different points of view from his neighbors and he tried to superimpose where the garage would go with white lines. He further stated that he has the lowest piece of property in that area, being 12" - 18" lower than his neighbors.

SPEAKING IN OPPOSITION TO THE PETITION

Christine Duffy, owner of 87 Richards Avenue, who abuts Mr. Messier's property, addressed the Board. She has lived at this address for 60 years and has fought snow for 60 years just like the residents next door. Ms. Duffy stated that she was speaking to express her opposition; that this property is very small and construction of a garage would really cover over 50% of the land where 25% is the maximum. To grant this variance would really substantially impact the property value of her home due to the loss of open space and air flow to her property as well as water drainage. She thanked the Board for considering what a sizeable impact this would have. She also stated that the new library, if construction goes forward, will also substantially impact her home. The encroachment of another facility on the southerly side of her house and, if the library goes through in her back yard, would leave her with no open space.

Karen Dutcher, owner of 79 Richards Avenue, which abuts Mr. Messier's property and is adjacent to Christine Duffy, also addressed the Board. The area is under flux as it may be the site of the new library on the JFK lot, however, they do not know exactly what will happen in that area. She had some concerns about this requests do to the uncertainty of the library.

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

DECISION OF THE BOARD

Vice-Chairman LeBlanc made a motion to deny the petition. Mr. Witham seconded. Vice-Chairman LeBlanc stated that the lot is a small lot and already has 41% building coverage where 25% is the maximum allowed and the open space is much less than what should be there. The fact that this would cut off air circulation to the abutting property is a serious factor and therefore he did not believe that this can be granted. Mr. Witham stated that what distinguishes this request is that most requests with 1' setbacks are replacing existing structures but that is not the case here. In other cases, lot coverage is being met and open space is being met and neither of those are being met. This is too intensive of a use and spirit and intent of the ordinance is to protect the abutters from projects such as this.



Chairman Blalock stated that he agreed with Vice-Chairman LeBlanc and Mr. Witham and also the request didn't meet the five criteria for a variance, most notably, #5, that it would not diminish the value of surrounding property, most certainly Ms. Duffy's. It is a very intensive request.

The motion to deny passed unanimously with a 6 - 0 vote.

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9) Petition of Pormosa LLC, owner, Chaquette Enterprises, LLC, applicant, for property located at 3601 Lafayette Road wherein a Variance from Article II, Section 10-208 is requested to allow the out door storage and display of fences and fence components in a district where such use is not allowed. Said property is shown on Assessor Plan 298 as Lot 1 and lies within the General Business district. Case # 9-8

SPEAKING IN FAVOR OF THE PETITION

Donald Chaquette and Lynn Del Chaquette, owners, spoke. Mrs. Chaquette stated that they are proposing to use the property for a fence business. It is a 5-acre parcel and they plan to use 13% of the property. They have some restrictions and setbacks but the detailed plan shows that the storage area that they are proposing is a 30' X 85' outside storage area with some display across some existing fence line area that is there now.

Vice-Chairman LeBlanc stated that there is a building in the front that is on the road and there is another building in the back. He inquired if the applicants were going to take over both of those for the fence business. Mrs. Chaquette stated that they would be using both. The front would be used as a sales office and then the one in back would be another inside storage area.

Vice-Chairman LeBlanc indicated that there is a dip in the grade between the front and the back. He inquired if they would be putting some fence in there as well. Mrs. Chaquette stated that there is a retaining wall at the very rear of the front building. The grade drops about 4' and there is a stairway that leads down to the 2nd level. The first building was rehabbed in 1985 or so and then afterwards the 2nd building was put in. There would be gates on either side of the front building so there would be no public access to the back of the building and one probably won't be able to see any of the wood storage because of the fence they plan on putting in.

Vice Chairman LeBlanc asked if they were planning to put fence across the whole lot. Mr. Chaquette stated that a 6' fence would go on the top of the retaining wall and then the additional 4' to the ground They figured the highest they could get with material would be 8' so that it would cover it completely from the road.

Mr. Horrigan looked for clarification on the lot plan and inquired if the school buses were going to be removed. Mrs. Chaquette stated that such was a condition of the purchase of the property; that everything will be removed from the property. All that will be left are the 2 buildings and some existing fencing that runs across the rear line of the second building and that, too, will be removed and replaced with new fencing.

Mr. Horrigan asked if the variance was to allow outdoor storage and fences that won't be seen from the highway. Mrs. Chaquette stated that all that will be seen are the fence displays themselves. Fencing will run down the sidelines as well to enclose that area. They realize that they do have abutters and they wanted to make it as aesthetically pleasing as possible.

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 the Board would be granting a variance to allow outdoor storage, fences and fence components, but the petitioners have indicated that they will be screening them and given their presentation, the site is going to look a lot better than it currently does and he believed it would be to everyone's advantage to allow this business to locate there.

Vice-Chairman Leblanc agreed with Mr. Horrigan and further stated that due to the configuration of the land, the materials to be stored won't be visible from the street and this is a good thing.

Chairman Blalock stated that he also agreed and felt strongly that they met the five criteria and anytime they have the opportunity to take a site and have someone use it in what is obviously going to be more environmentally friendly and aesthetically pleasing, the Board owes it to the rest of Portsmouth to do that. The fence will look nice as they would not want an unattractive fence facing their potential customers so the Board can rest assured that this site will be greatly improved by allowing this use to occur. The motion to grant passed unanimously with a 6 - 0 vote.

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10) Petition of Elaine Michaud, owner, for property located at 321 Dennett Street wherein the following are requested: 1) a Variance from Article III, Section 10-302(A) to allow a 16' x 23' accessory building with a full basement with: a) a 9'6" rear yard where 10' is the minimum required, and b) 26.6% building coverage where 25% is the maximum allowed, and 2) a Variance from Article II, Section 10-206(12) is requested to allow a real estate appraisal business (Wentworth Associates) in 368 sf of the accessory building where only 300 sf is allowed for Home Occupation I. Said property is shown on Assessor Plan 160 as Lot 40 and lies within the General Residence A district. Case # 9-9

Mr. Jousse stepped down on this Petition leaving the Board with 5 members. As this is a variance request, they would still need a 4 vote majority and the applicants always have the option of withdrawing for a more complete board. If not, the Board can proceed.

Attorney Charles Griffin, representing the owner, asked for a 5 -minute break to speak with his client.

5 Minute break taken.

Meeting was reconvened and Attorney Griffin requested that this Petition be rescheduled for the October meeting.

Vice-Chairman LeBlanc made a motion to table until October. Ms. Marchewka seconded.

Petition tabled until the October meeting

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11) Petition of Tom and Dani Rooney, owners, for property located at 29 Spring Street wherein a Variance from Article III, Section 10-302(A) is requested to allow a 4' x 17' addition to the right side of the dwelling creating 25.7% building coverage where 25% is the maximum allowed. Said property is shown on Assessor Plan 130 as Lot 21 and lies within the General Residence A district. Case # 9-10

SPEAKING IN FAVOR OF THE PETITION

Tom Rooney, owner, spoke and indicated that their plan was to renovate their family room and incorporate it into an existing 3 season porch which is at the end of the existing family room and about 4' wider than the existing family room. What he would like to do is square off the room to make it more useful and it will also look better.

Vice-Chairman LeBlanc asked if they were essentially filling in the little area of the house, a piece of the back and the main house. Mr. Rooney responded that that was exactly what he was doing. He believed that the 3 season porch was added after the family room and he was just squaring that off and also confirmed that it was hardly visible from the street.

Mr. Horrigan asked if the small notch would preserve the back door entrance and the side window and that is why it wasn't extended all the way. Mr. Rooney responded by saying, "yes".

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

DECISION OF THE BOARD

Chairman Blalock read a letter received from abutters Laura & Greg Ludes of 274 Miller Avenue that supported Mr. Rooney's Petition.

Vice-Chairman LeBlanc made a motion to grant the Petition as presented and advertised. Mr. Witham seconded. Vice-Chairman LeBlanc indicated that this is one of the smallest requests that he has seen. They are looking for .7% variance because of lot coverage. He did not feel that the addition would be visible from the street and would not adversely affect property values as it would not block anybody's view or wind and he felt the Board could grant the variance. Mr. Witham stated that this is the most minimal request that he has seen and it easily meets the criteria and would have absolutely no affect on the abutters.

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

.....
12) Petition of Eastern Development LLC, owner, UR of Portsmouth, applicant, for property located at 1465 Woodbury Avenue wherein Variances from Article XII, Section 10-1201(A)(5) and Section 10-1204 Table 15 are requested to allow 917 parking space to be provided where 1,057 are required for the multi purpose shopping center. Said property is shown on Assessor Plan 216 as Lot 3 and lies within the General Business district. Case # 9-11

SPEAKING IN FAVOR OF THE PETITION

Attorney Peter Loughlin asked if Petition #13 could be heard before them to allow them more time.

Vice-Chairman LeBlanc made a motion to hear #13 first, followed by #12. Mr. Horrigan seconded.

Motion to switch was granted by a 6 - 0 vote.

.....
13) Petition of Aranorian Oil Co., Inc., owner, for property located at 766 Lafayette Road wherein the following are requested: 1) a Variance from Article III, Section 10-301(A)(8) to allow a 48' x 52' canopy with a 2.8' front yard where 105' is the minimum required, and 2) a Variance from Article III, Section 10-301(A)(7) to allow a portion of the 48' x 52' canopy to be located within 100' of the salt water marsh wetlands/mean high water of Sagamore Creek where 100' is the minimum required. Said property is shown on Assessor Plan 244 as Lot 6 and lies within the General Business district. Case # 9-12

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernard Pelech, Attorney for Aranosan Oil Co, stated that the Board was familiar with the site. It is one of the few remaining vestiges of what was formally a Phillips 66 station with a triangular shaped canopy on an angle that was developed in the 50's and the 60's. It is now a Sunoco station. Attorney Pelech gave a history of why those canopies were built like they were. Frank Lloyd Wright for Phillips 66, who came out of Oklahoma, designed them. They were designed to retain water on the roof of the building for a cooling factor and were designed for the southwest so that water would sit on top of the building and cool the building. It didn't work very well in New England because of freezing conditions.

What is being proposed is a replacement of this canopy with a more conventional canopy that covers the pumps. Attorney Pelech stated that the Board is familiar with one that is out there, referring to the existing site plan of John Chagnon, as well as the proposed site plan. It can be seen that the canopy is more of an architectural feature and doesn't cover the pumps and that is critical in this location. The canopies serve many purposes, one of which is obviously to provide shelter to the individual who is putting gas in his car but more importantly, in weather sensitive areas, it also provides a shield from rain to any hydrocarbon product that may be on the pavement below the canopy. Environmentally they are an asset; especially where there is such close proximity to the salt marsh. They are proposing to put a conventional rectangular canopy to cover all of the pumps.

Attorney Pelech indicated that they were there for relief from two aspects of the zoning ordinance. The first is a 100' setback from the salt marsh. The proposed plan shows that the northwesterly corner of the canopy, which is 18' above the ground, lies within that 100' mark that is marked on the plan. The part of the canopy that is anchored to the ground is well outside of the 100' setback from the salt marsh. It is similar to a provision that is in the zoning ordinance that they don't have to deal with, which is Article VI, Inland Wetlands Protection. This says that you can't have certain structures within 100' of the inland wetland protection district, as opposed to salt water, and cantilevered structures are allowed, as long as they don't contact the earth within that 100'. Therefore, they are exempt in the inland wetland. There is no such provision in the 100' tidal marsh setback. The structure would be within the 100' buffer zone but 18' above the ground. No part of the canopy touches the ground within 100' of the buffer zone.

Attorney Pelech did not feel that the request would cause any diminution in value of surrounding properties. Imposition of the ordinance would create a hardship because it basically prohibits that corner of the canopy from being within the 100' buffer tide line however it does not serve any legitimate purpose. If anything, the proposed canopy would actually be beneficial to the salt water marsh which is within 100' because it covers that much asphalt that exists there now, which has had hydrocarbonate spilled on it over the past 35 years. The proposal will prevent storm water from hitting that asphalt and going into the wetlands. The new canopy has a drainage system where it pitches to the middle and comes down a downspout. It is drained away from the salt marsh. Attorney Pelech did not feel that there was a fair and substantial relationship between the intent of this 100' salt-water setback in this instance because the proposal was not for something on the ground but rather a canopy which is up in the air.

Attorney Pelech felt that it was actually in the public interest to grant both of the variances for the reasons stated because of what they do. They are state of the art and they have a mechanism whereby they provide shelter to the drivers who are filling their tanks and they are also preventing direct rain, snow, or sleet from hitting the surface around the pumps where there could have been spills in the past and it prevents that spill from being flushed into the

surrounding wetlands. Attorney Pelech felt that substantial justice would be done by granting both variances. The hardship upon the owner, if the variances were denied, would certainly not be offset by any benefit to the general public. As stated, it is not contrary to the spirit and intent of the ordinance.

Attorney Pelech stated that he would not go into his dissertation about the Route 1 widening but it has occurred in this location also. There is about an 8' range within the Route 1 right-of-way and they are proposing to be about 2.8' to the closest point of the right-of-way. There is roughly 12' from the edge of the pavement to the canopy. This is actually a setback further than some of the other signs and canopies on that road. Within the last 2 years the City put in a 0 setback for a canopy for a station up the street. Many of the signs and businesses in that area are within a foot or two of the right-of-way but the right-of-way has pretty much been maxed out and won't be widened any further.

In conclusion, Attorney Pelech stated that he felt that the applicant met all of the criteria for the granting of the variances. They have a 105' setback yet they have a lot that is only 150' deep. They have 100' salt water marsh setback and that leaves 50' in the front and 45' in the back. They have a situation where they don't have any buildable area. Paul Kenney from Aranosian Oil was present for any questions regarding the operation of the station. Attorney Pelech indicated that nothing is going to change with regard to the existing building at this time. It's simply a canopy replacement. It will meet all of the fire suppression requirements of the State of NH. This will have to go to site review for a determination about drainage, lighting, fire suppression, so that basically the only issue before this board is a setback from the salt water marsh and a set back from Route 1 in front. Attorney Pelech thanked the Board for their time.

Mr. Jousse asked whether there would be fire suppression with the new canopy where there was none before. Attorney Pelech stated that he believed there was none now and the State Code fire suppression requirements will be met. Attorney Pelech stated that he is unaware of exactly what the State Code is right now. Paul Kenney of Aranosian Oil indicated that currently there is no State Code for fire suppression of the canopy. He understood that there are new regulations coming out that will be requiring a more technical or vastly improved fire suppression system. Mr. Kenney stated that someday, this location would be turned into a convenience store and when that happened he would be converting and putting in a state of the art fire suppression. Mr. Kenney indicated that he would stipulate to that.

Vice-Chairman LeBlanc asked if the canopy is 2.8' from the sidewalk in front of the property and that is roughly 15' from the pumps. Attorney Pelech responded that he had asked John Chagnon about that. Mr. Chagnon indicated that the edge of the canopy is 11' from the pump island and it extends 11' over from the pump island. It's 2.8' from the edge of the green landscaped island in front of the canopy.

Vice Chairman LeBlanc also asked about lighting. Attorney Pelech indicated that it would be in compliance with Article V. It won't be one of those things that you can see from outerspace.

Mr. Witham indicated that the canopy would address some environmental issues and that it would only be as effective as the slope of the grading on the existing conditions. Mr. Witham inquired if the existing grading would be reworked around the pumps so that water doesn't just come right through there. Attorney Pelech indicated that they certainly would have to do that as part of site review.

Chairman Blalock indicated that what he felt Attorney Pelech was alluding to was that under current conditions, if there is no canopy and someone spills gas or oil and it rains, the spill just spreads out and what the canopy obviously does is keep it right where it is unless there is some sloping. Apparently, according to the experts, it does help keep a spill somewhat contained because it doesn't allow, especially soaking rains, to disperse them as quickly.

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

DECISION OF THE BOARD

Vice-Chairman LeBlanc made a motion to grant the petition as presented and advertised. Mr. Marchewka seconded. Vice-Chairman LeBlanc stated that although the canopy is almost 3' from the edge of the property, the edge of the canopy is only 11' from the edge of the pumps so, when the car is roughly 8' wide it doesn't leave a whole lot of space for maneuvering around. Vice Chairman Leblanc felt that part of the salt marsh that impinges on this canopy really is small and as has been testified, the canopy is 18' above the ground and it will actually be a benefit to the salt marsh by helping to prevent gasoline and oil

getting into that ecosystem. For all of these public benefits that will be received from this canopy, it should be granted. Mr. Marchewka agreed that the public benefit far outweighs any potential problems with encroachment of the canopy onto the setback for Lafayette Road and the setback for the salt marsh. It is better environmentally and there is the buffer between Lafayette Road where the traffic is going by and the canopy.

Mr. Witham stated that he would support the motion and in lieu of any stipulations, for the record, would just say that it was his hope that the site review will confirm any drainage concerns.

Vice Chairman LeBlanc indicated that he would like to add two stipulations: 1) that Site Review looks over the drainage issue and 2) the light would also be addressed by Site Review, so that the lighting does not fall outside of the property lines.

Chairman Blalock indicated that it could simply be stipulated that the lighting meet the requirements of Article V. The motion was to grant with the stipulation that Site Review address the drainage and that the lighting be according to the requirements of Article V.

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



Chairman Blalock asked for a Motion to take Petition #12, of Eastern Development, off the table. Motion made and seconded. The motion passed on a 6-0 vote. The Chair stated that the Petition had been read into the record and the Board would be dealing with the Petition of Eastern Development LLC, owner, UR of Portsmouth, applicant for property located at 1465 Woodbury Avenue.

Attorney Peter Loughlin spoke on behalf of UR of Portsmouth, Inc., which is supposed to put a Pizzeria Uno Restaurant on the area near where the Schoolhouse restaurant used to be. Attorney Loughlin stated that upon arriving at the meeting, an additional issue was brought up, which he was unaware of until this evening. Jim Lamp of Eastern Development and Andrew Eills, representing Demoulos were present and what they would like to do is take more time to work out some of these issues. Attorney Loughlin stated that he would request that the matter be tabled or withdrawn adding that he was unsure of the correct procedure.

Chairman Blalock clarified that the applicant wanted to table the matter until next month adding that if the request changes, it would have to be re-advertised as such. Ms. Tillman indicated that it should be tabled and if they needed to re-advertise, they could.

Motion was made and seconded to table the Petition until next meeting. The motion to table passed unanimously 6 - 0.



14) Petition of Wren's Nest Motel Corp, owner, for property located at 3548 Lafayette Road wherein the following are requested: 1) a Variance from Article II, Section 10-206 and Article IV, Section 10-401(A)(1) to allow two additional dwelling units (28' x 50' two story dwelling and a 24' x 30' two story dwelling with a connector having 20+ sf second floor connector), 2) a Variance from Article II, Section 10-302(A) and Article IV, Section 10-401(A)(1) and Section 10-402(A)(2)(c) to allow a 5' x 14' second floor deck with stairs to grade for egress from the second floor apartment with: a) a 12' left side yard where 20' is the minimum required, and b) all structures creating 10.5% building coverage where 10% is the maximum allowed. Said property is shown on Assessor Plan 297 as Lot 6 and lies within the Single Residence A district. Case # 9-13

Withdrawn

This Petition was withdrawn prior to the hearing.



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 October 15, 2002 at 7:00 p.m. in the City Council Chambers.

Respectfully submitted,

Jane M. Shouse
Secretary

/jms