

**MINUTES OF THE BOARD OF ADJUSTMENT MEETING
PORTSMOUTH, NEW HAMPSHIRE**

7:00 P.M.

CITY COUNCIL CHAMBERS

DECEMBER 16, 2003

MEMBERS PRESENT: Chairman Charles Le Blanc, Vice-Chairman James Horrigan, Alain Jousse, David Witham, Alternate Arthur Parrott and Alternate Steven Berg, Nate Holloway, Christopher Rogers, Robert Marchewka

MEMBERS EXCUSED: n/a

ALSO PRESENT: Lucy Tillman, Planner

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**I. PUBLIC HEARINGS**

1) Petition of **Leemilts Petroleum Company, owner**, for property located at **1815 Woodbury Avenue** wherein a Variance from Article IX, Section 10-908 Table 14 was requested to allow a freestanding sign: a) 21' 9" in height where 20' is the maximum allowed, and b) 2'± from the front property line and 2'± from the right side property line where 20' is the minimum required for each. Said property is shown on Assessor Plan 215 as Lot 13 and lies within the General Business district. Case # 11-1

**SPEAKING IN FAVOR OF THE PETITION**

Michael Loin, New England Division Manager for Bertin Engineering Assoc. addressed the Board. He stated that LUKOIL had purchased a number of Getty Petroleum sites throughout New England to convert from Getty to LUKOIL. The sign on this site had no record of ever being granted a permit. They were replacing the faces of existing signage that met the square footage requirements; however, the Building Inspector felt that they needed to come before the Board of Adjustment as the existing sign was not in conformance with the setback and height regulations.

Mr. Loin felt that the sign would have been in conformance with the original property line if a ROW taking of 20' had not occurred in the past. He stated that the present top-logo signage would conform, along with the signage for the mini-market, to the square footage requirements for the Ordinance. He stated that the sign had been there since the early 80's.

Mr. Jousse confirmed that only the area on the sign reading "Getty" would change, being replaced with "LUKOIL".

Chairman LeBlanc inquired about the right side yard. Mr. Loin stated that it was 2' of the side property line also.

Vice-chair Horrigan questioned the location of the mature white pines shown and expressed concern about their removal. Mr. Loin maintained there was no proposal to remove the trees and that they appeared to be on abutting property.

Ms. Tillman stated the department signed off a building permit application for the operator of the station to use his office to do paperwork for the sale of vehicles. She stated that he was not allowed to

sell or store vehicles on the property and was presently in violation. He was contacted and moved several vehicles off within the last 24 hours. She suggested that if the Board chose to grant the petition, the approval be made with the stipulation that no sign permit be issued until the property comes into full compliance and a stipulation that no more vehicles be stored or sold on the property.

**DECISION OF THE BOARD**

Vice-chair Horrigan moved to grant the petition as presented and Mr. Rogers seconded the motion with the following stipulations:

- That the sign permit not be granted until the property is in full compliance with the zoning ordinance.
- No vehicles are to be stored or offered for sale on the property in the future at anytime.
- That if the vegetation located near the sign is on the owner’s property, it not be disturbed in an effort to improve the visibility of the sign.

Mr. Horrigan stated that any deviations from the above stipulations, in terms of future use, would require that they come before the Board for approval.

Vice-chair Horrigan stated that the height of the sign and the property line issues were the same as for the existing sign; and that there was no other place to put a sign on this property as a result of the sharp angle of the property line.

He felt that the variance would not be contrary to public interest, allowing the public to know the location of the gas station before they have driven by. He felt that the need for a sign of this type, and the fact that the front yard had been taken, rendered the proposal a reasonable use of the property. He felt that it did not injure the public or private rights of others, that it was consistent with the ordinance, and that the Board would be doing substantial justice to the owners by granting the variance. Mr. Horrigan maintained that changing the sign from “Getty” to “LUKOIL” would not diminish the value of the surrounding property.

Mr. Rogers agreed with Mr. Horrigan, stating that the hardship lay in the fact that the sign has existed in that spot for at least 10 years and the property was taken either by purchase or eminent domain, creating non-conforming setbacks. He felt that it would be in the spirit of the ordinance to grant the variance and there would be no diminution of value of surrounding properties.

No further comment being heard, Chairman LeBlanc called for the vote to grant as presented and advertised with the three aforementioned stipulations. The petition was unanimously granted.

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2) Petition of **Griffin Family Corporation, owner**, and **Astoria Griffin Park, LLC, applicant**, for property located at **200 Griffin Road** wherein a Variance from Article XII, Section 10-1203 is requested to allow three 12’ x 20’ loading areas for a 41,020 sf medical/professional office building where one 12’ x 20’ and three 12’ x 45’ loading areas are required. Said property is shown on Assessor Plan 263 as Lot 1-4 and lies within the Industrial district. Case # 12-1

SPEAKING IN FAVOR OF THE PETITION

Attorney Greg Hirsch, representing Astoria Griffin Park LLC, addressed the Board regarding a site plan that received site review approval on October 16, 2003. He stated that the ordinance requires larger and more numerous loading spaces than are necessary for the proposed facility because the office building use would be almost exclusively medical offices. He felt that for the purpose of the proposed office building, it would be better to utilize the pavement for additional parking rather than having unused loading spaces.

Attorney Hirsch contrasted the proposed layout of the loading spaces with the zone-compliant plan that had been approved by the Planning Board on October 16. He stated that if the variance were to be granted, they would submit the site plan that the Board was holding, with the smaller size loading spaces which would not require any change in the shape of the pavement.

Attorney Hirsch felt that the approved medical/professional office building would be a reasonable use of the land and available pavement. The petition met the spirit of the ordinance in that it is intended to get the appropriate number of loading spaces for a building given its size and use. He felt that it would not affect any property values in the area and would benefit the public interest by having additional parking available.

Vice-chair Horrigan commented that the site plan showed 4 loading areas. Attorney Hirsch agreed, stating that they were requesting that the Board allow three loading spaces of the specified size and allow them the flexibility to work with the Planning Board on locating the loading areas. Mr. Horrigan objected, stating that the Board needed to know exactly what they were voting on.

Attorney Hirsch asked Mr. Horrigan if the location of the spaces on the site plan would influence the Board of Adjustment's decision. Mr. Horrigan replied that once they grant a variance, it is permanent and they are proposing a medical/professional building on an industrial site. He further stated that some part of the building might be used for industrial uses many years ahead and he did not want to preclude that possibility.

Lucy Tillman replied that the Department was comfortable with the approach being taken with the application, in regards to the loading areas that would be most suitable for the proposed building type. She felt it was a professional office building that will be condominiumized and that there would be no change into an industrial building in the near future. If that were to occur, she felt it would be a demo and rebuild of the entire site. She stated that if the Board chose to grant it, they make a stipulation for the professional office building; and, any future changes requiring larger loading areas would be required to come before the Board. For the uses proposed, she stated that it seemed sensible to have the loading areas spread out amongst the offices.

Mr. Holloway questioned the increase in office space and how it would impact traffic on Griffin Road and Route 33. Attorney Hirsch stated that as a stipulation to the site plan approval, a significant contribution was made toward the cost of a traffic signal at that intersection and an agreement was reached with the city. The city will take over the responsibility for the construction as part of planned improvements to Greenland Road. Mr. Holloway questioned the timeframe in which this light might come into effect but no timeframe has been clearly established.

DECISION OF THE BOARD

Chairman LeBlanc closed the Public Hearing. Mr. Horrigan made a motion to grant the petition as advertised and presented, with the stipulation that the building be used for medical or professional office use only. Mr. Witham seconded the motion.

Vice-chair Horrigan stated that it would be reasonable to provide loading areas around the building where they are actually needed. It would be in the public interest as it will provide more parking on the same amount of paved surface. The ordinance would interfere with the reasonable use of the property as a medical/professional building. Mr. Horrigan did not feel that the rights of public or private, including immediate abutters, would be harmed by granting this variance. He felt it was consistent with zoning code and the Board would be doing substantial justice to allow a development that doesn't impose such large loading areas. He also felt that there would be no negative impact on the value of surrounding properties.

No further comment being offered, Chairman LeBlanc called for the vote to grant the variance with the following stipulation:

- That the building be used as a medical/professional business office.

The petition was unanimously granted.

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3) Petition of **Laura and Greg Ludes, owners**, for property located at **30 Spring Street** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow the following additions to the existing dwelling: a) a 2' x 8' bay window to the front with a 4' 1" front yard setback where 15' is the minimum required, b) an 18' x 22' 1 1/2 story garage with second floor living space having a 7' 4" left side yard where 10' is the minimum required; and, c) a 6' x 12' deck creating 30.4% building coverage where 25% is the maximum allowed. Said property is shown on Assessor Plan 130 as Lot 13 and lies within the General Residence A district. Case # 12-2

**SPEAKING IN FAVOR OF THE PETITION**

Lucy Tillman, planner, stated that Mrs. Ludes had presented a proposal requesting less relief than was originally requested in the advertisement. The proposed deck in rear of building will be reduced to 4' x 6'; the addition to the left side of the house will be reduced to 16' x 22'; the building coverage will be reduced to 28.5% as opposed to 30.4%.

Mr. Ludes proposed the addition of a bay window in the front of the house as well as a one-car garage to enable off-street parking for both of their cars. They also wanted to add trees to the side of the house to address concerns of neighbors regarding the appearance of the structure. Mrs. Ludes presented a letter in support of the proposed addition for the record.

Vice-chair Horrigan questioned the effect the proposed addition would have on the tree on the property. Mrs. Ludes stated that the tree was afflicted with cankers and that the root system would be affected when they excavated for the addition.

**SPEAKING IN OPPOSITON TO THE PETITION**

Mr. David Scala, 302 Miller Avenue (north boundary of the lot) stated that the proposed garage would encroach on his view by approximately 12' beyond the existing structure. He presented three stipulations that had been discussed with the Ludes and they are as follows:

- Mature shrubs or vegetation to be planted along the entire left side of the proposed structure to buffer the view of the raw garage.
- Shrubs would be paid for, installed and maintained by the Ludes.
- That the Ludes be required to move into the 30 Spring Street dwelling and not present the project and resell the house, with the exception of an unforeseen professional relocation which would grant the stipulation void.

Mr. Berg questioned the legality of attempting to bind the owners to live in a particular place. Chairman LeBlanc responded that the Board had no jurisdiction once the variance was granted.

Mr. Scala offered that if the bushes were in place, he would be in favor of the variance.

No further comment being offered, Chairman LeBlanc closed the Public Hearing.

**DECISION OF THE BOARD**

Mr. Witham made a motion to grant as presented and advertised with no stipulations. Mr. Jousse seconded the motion.

Mr. Witham felt that discussion regarding the shrubs should be worked out between the owner and abutter. He felt that the variance would not be contrary to the public interest, allowing the Ludes to get their cars off the street and one into a garage. He also felt that the three requests for variance were minimal and that they had taken the most minimal approach to create the garage, the side setbacks were as tight as they could make them and still be able to get a car into the garage. The lot coverage will be 3.5% over and for that area that was also minimal. He stated that it would be reasonable to grant the variance and that it would not injure the public or private rights of others. It is consistent within the spirit of the ordinance to allow the expansion of a house in a reasonable manner and substantial justice is done because it allows them to get a car in the garage. Mr. Witham did not feel it would diminish the value of surrounding properties.

Mr. Jousse agreed with Mr. Witham, stating the problem in Portsmouth of the very small lots that were created 100+ years ago. In regards to the abutter's question of the view, Mr. Jousse stated that the Board had no right to regulate the view. He also felt that the issues stated in the stipulations should be worked out between owner and abutter. He agreed with Mr. Witham that the request was minimal and doable.

Vice-chair Horrigan spoke briefly to the abutter's request, asking whether the Board should totally ignore his request regarding vegetation screening. He stated that the abutter's view would be altered. He felt that the Board might be ignoring the testimony of the abutter and asked that the motion include something relative to the vegetation.

Mr. Witham stated that without a depiction of the shrubs that are being proposed to guide him in his decision, he did not want to get into "landscape design".

Mr. LeBlanc asked for a vote to grant as presented and advertised with no stipulations. The petition was unanimously granted.

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4) Petition of **James and Catherine Lamond, owners**, for property located at **84 Haven Road** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) are requested to allow the following: a) a 220 sf irregular shaped front porch with a 7.33' front yard where 30' is the minimum required, b) a 7' x 24' one story addition to the left side of the existing dwelling with an 18.33' front yard where 30' is the minimum required; and, c) a 4' x 10' porch on the right side with a 27' front yard where 30' is the minimum required. Said property is shown on Assessor Plan 206 as Lot 28 and lies within the Single Residence B district. Case # 12-3

Mr. Rogers made a motion to table the above petition until the January 2004 meeting and it was seconded by Mr. Jousse.

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5) Petition of **Mary C. S. Maurer, owner**, for property located at **65 Rogers Street** wherein Variances from Article III, Section 10-303(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow the addition of an 18'6" x 21' one and one half story barn with second floor living space to the rear of the existing building with a 4'± left side yard where 10' is the minimum required. Said property is shown on Assessor Plan 115 as Lot 2 and lies within the Mixed Residential Office and Historic A districts. Case # 12-5

**SPEAKING IN FAVOR OF THE PETITION**

Attorney Bernard Pelech addressed the Board, stating that the property abutted the Senior Citizens Center and a garage on the right and the only single-family abutter was Mr. Kaufhold at 53 Rogers Street. The Maurers were proposing the conversion of a two-family home back to a single-family dwelling, making use of the property less intense. He stated that it was a non-conforming lot with the main structure on the extreme left of the property and a shed at the rear of the property with a 0' left side setback. Attorney Pelech stated that they were proposing to demolish and replace that shed with a 1½ story barn that will be 4' off the property line.

Attorney Pelech stated that the requested variance would not be contrary to the public interest as it would eliminate a dilapidated structure and replace it with a new structure attached to the single-family unit, thereby making the structure more conforming in regards to the zoning ordinance.

Attorney Pelech stated that the zoning ordinance interferes with the owners' reasonable use of the property. He stated that the addition being proposed would provide a playroom for the children above the garage, which would be a use typically associated with a dwelling unit. He stated that since there exists a 0' side setback which will be increased to a 4' setback, the evidence exists that there was no fair and substantial relationship between the general purposes of the zoning ordinance as applied to this property.

Attorney Pelech stated that Mr. Kaufhold's property to the left has the same situation. His house hugs his left side property line so there is open space between the two structures.

He also stated that granting the variance would not injure public or private rights. There are no express easements or coverages on the property or public rights over the property.

Regarding the third criteria, Attorney Pelech stated that the spirit and intent of the ordinance in creating a 10' left side setback in this district is to provide adequate light and air and access for emergency vehicles. Given the facts that Mr. Kaufhold's property is in the far left side of his lot and there will now be more light and air and access for pedestrians and/or emergency personnel, Attorney Pelech believes that it is not contrary to the spirit and intent of the ordinance.

He stated that substantial justice would be done in granting the variance, as the hardship would not be put on the Maurers. He stated that he saw no benefit to the general public in denying the variance as the set backs will become better than they presently are.

He stated that there would be no diminution to the Parrott Senior Center or the Wentworth property values; nor would there be any negative impact to the value of the school or Mr. Kaufhold's property. The 65 Rogers Street property is going from a multiple dwelling to a single-family dwelling and the aesthetics will be an improvement to the neighborhood.

A representative of the architect explained photos depicting views of the 65 Rogers Street property as well as surrounding properties and the plans to attach the proposed barn to the house.

### **SPEAKING IN OPPOSITION TO THE PETITION**

Mr. Kaufhold, 53 Rogers Street, addressed the Board regarding his concerns about the proposed addition of 16.5' on top of a 10' building. He feels that the proposed structure will diminish both his view of South Mill Pond and the value of his addition. He is chiefly concerned about how the obstruction of the view will impact the value of his newly renovated property.

Mr. Kaufhold stated that he had come before the Board with a similar proposal and that he couldn't show hardship as to why he couldn't build out to the right side; therefore he felt that the point of hardship was a difficult one to prove.

Mr. Witham asked Mr. Kaufhold, if the barn were moved 10' as opposed to the proposed 4', would it still have the same effect on his view and Mr. Kaufhold's response was in the positive.

Attorney Pelech addressed the height of the proposed structure. He stated there is no specific right to a view that has been recognized by the courts in the state of New Hampshire. He stated that hardship existed in the fact that there was no additional room on the lot to expand and asked the architect to explain.

The architect stated that they had spoken to the city to determine how best to minimize the impact to the property and the suggestions were as follows:

- Try to bring the structure away from the north setback to create a greater setback than currently exists.

- Minimize the fenestration that existed on the north side of the house so that it would impact the neighbors as little as possible.

The architect agreed that the structure would impact Mr. Kaufhold's view but that it would not take the view away.

Mary Mauer addressed the Board regarding the proposed renovation and the impact it would have on Mr. Kaufhold's view.

Chairman LeBlanc asked if there was any reason why they couldn't move the barn the 10' from the property line; Mrs. Mauer responded that they would have no back access to the barn and it would inhibit the side entrance to the structure.

### **DECISION OF THE BOARD**

Vice-chair Horrigan made a motion to grant the petition as presented and advertised and Mr. Witham seconded the motion.

Mr. Horrigan stated that given the shape and size of the lot, it was clear that moving the replacement for the shed back another 6' would create problems with the use of the yard and exit and entry into the house. It would also create difficult internal renovation problems relative to the addition on the second floor.

The proposed addition would be an improvement, thus serving the public interest as well. Mr. Horrigan cited the configuration of the lot and the close proximity of the house to the property line as hardships. He felt that whatever renovations were done would cause a problem on the left side line.

He stated that it was a reasonable use of the property and that the ordinance was not intended to prevent the owners from improving the appearance of the structure and making it a better house for them to enjoy.

No public rights have been violated. On the subject of private rights, Mr. Horrigan stated the difficulty in dealing with the issue of view. He felt there still would be some view of South Mill Pond. The request was consistent with the spirit of the ordinance to encourage property owners to improve their property; and substantial justice would be granted to the owners in allowing them to replace a derelict shed. He felt that no negative impact on surrounding properties would result, rather a relative increase in property values would occur.

Mr. Witham agreed with Mr. Horrigan and added that given the unique setting of the property, the structures all hug the left side, it is an improvement over current setbacks. He stated it was a reasonable use of the property and no justice would be done by not granting the variance. Mr. Witham referred to an earlier point when Mr. Kaufhold stated that even if the structure could be moved the 10' to meet all the requirements, the impact on the view would be the same. He felt it would be an improvement to the neighborhood.

Chairman LeBlanc stated that he could not support the variance because he felt there was a reasonable way to position the structure on the property without a variance. He felt that the arguments were not

adequate in that structural changes could be made to alter the ingress and egress somewhat to meet the Ordinance.

Chairman LeBlanc called for the vote to grant as presented and advertised. The petition was granted with a 4-3 vote. Chairman LeBlanc, Mr. Holloway and Mr. Jousse voted in the negative.

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6) Petition of **Frank Perrone and John Giacalone**, owners, for property located at off **Falkland Place** wherein the following were requested: 1) a Variance from Article II, Section 10-207(13) to allow eight dwelling units on a lot where four are the maximum allowed, and 2) a Variance from Article III, Section 10-303(A) to allow 2,440 sf of lot area per dwelling unit where 7,500 sf of lot area is required per dwelling unit. Said property is shown on Assessor Plan 212 as Lot 26-1 located in the Mixed Residential Business district and Lot 27 located in the General Residence B district including Alley No. 1 and Alley No. 2 (lots and alleyways to be combined). Case # 12-6

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernard Pelech addressed the Board, describing the property in question as two vacant lots adjacent to properties used for both commercial and industrial uses, Interstate 95 and Ranger Way, a designated cut-through for trucks on their way to the oil terminal. He stated that it was not the typical Atlantic Heights lot and that it also had a park and a single-family residence as abutters.

Attorney Pelech referred to a map which is part of the record, depicting the surrounding four lots and their respective square footage per dwelling unit- Lot 120- 1,259 sf; Lot 29- 1,444 sf; Lot 28- 1,375.5 sf; Lot 25-1, 322.5 sf.

What was being proposed by Attorney Pelech was 2,440 sf per dwelling unit, which he maintained was 1,000 sf more than the above depicted lots. He proposed that the other lots did not provide off-street parking. Attorney Pelech spoke to the two variances they were requesting in order to build affordable housing on the proposed vacant lot.

He stated his disagreement with the Planning Department's view that the proposed plan would be an over-intensification of the property. He felt it would not negatively impact the neighborhood, given its location relative to Atlantic Heights. He maintained that the residents would not be driving through Atlantic Heights to their homes but using Kearsarge and Ranger Way. Residents of the proposed building would not be impacting Kearsarge, Raleigh Way or other nearby streets. The proposed property is in the shadow of the interstate and the front yard and driveway face Ranger Way and therefore would not impact the residential routes.

Attorney Pelech felt the proposal met the five criteria. It would not be contrary to the public interest as it would fulfill a need for affordable housing in the seacoast area. It would put a taxable structure on a vacant lot and would not impact the school system as it would be two-bedroom units.

He also maintained that there were special circumstances regarding this lot and referred to the similarity to a Suzanne Drive lot that sits in a residential development but is surrounded by non-residential uses. He felt that it was a reasonable use of the property because it would be 1,000 square feet per dwelling unit more than the 22 units depicted on the map. It is not out of the character of the

neighborhood. 1) The lot does qualify for special unique circumstances; 2) The use of the land would be reasonable, and 3) It would not interfere with public or private rights.

Attorney Pelech maintained that the proposed structure would not diminish the value of surrounding properties. He referred to the stipulation placed on the conveyance of the property by the City Council which stated that there be screening on the back side of alleyway 1 and alleyway 2. He stated that Lot # 24 would be screened in a way would be more in keeping with the character of Atlantic Heights and that there will be no diminution to the oil terminal, the park or the commercial buildings next door.

Substantial justice would be done by granting the variance, as there would be no benefit to the general public in denying this variance. It would remain a piece of vacant land, generating minimal tax benefit for the City as opposed to tripling or quadrupling the tax benefit to the City. It will not create undue demand on municipal services or city water and sewer. All units would have off-street parking, according to zoning ordinance. There would be no parking on the street.

Attorney Pelech maintained that the proposal was not contrary to the spirit and intent of the ordinance, not when surrounding properties have densities that have 1200, 1300, 1300 and 1400 sf of lot area per dwelling unit. He is proposing 2,440 sf per dwelling that is 75% greater than the surrounding lots.

Vice-Chair Horrigan questioned Attorney Pelech's opening remarks that referred to the alleyways which were being conveyed by the City. Attorney Pelech explained that the owners own lot 26A and the City Council had agreed to convey lot 27 and alleyways 1 and 2 approximately six months prior and that they were awaiting a deed from the City Attorney.

Mr. Witham questioned the type of materials that would be used to construct the proposed building. Attorney Pelech said they were considering brick townhouse units that would reflect the architecture of Atlantic Heights.

Chairman LeBlanc clarified that two units would be able to be placed on the lot to meet the 7,500 sf requirement.

SPEAKING IN OPPOSITION

Mr. Joe Desaro, direct abutter, voiced his concerns regarding the proposed structure and how it would fit in Atlantic Heights. He has invested considerable time and money in his commercial property to bring it back in line with how Atlantic Heights looks, converting to mostly office use. Mr. Desaro expressed concern regarding the future upkeep of the proposed structure. He expressed that neighbors have worked together to clean up Atlantic Heights and that he also had concern over the height of the proposed structures being out of character with the neighboring structures. He pointed to the prohibitive cost of constructing income property/ low-income housing out of brick and how it would not work economically per square foot.

Mr. Berg asked that if it was a two-story brick structure that looked like everything out there, would Mr. Desaro be opposed. Mr. Desaro answered in the negative. He stated that he was concerned with both, the number of units being proposed (8), as well as how the units would look. He felt strongly that the site would not support 8 units.

Mr. Ken Westin, an architect and resident of Atlantic Heights neighborhood, voiced his concerns regarding the proposed parking. He stated that it would consume most of the site and was not consistent with parking for the residential units that are currently in the neighborhood. He was also concerned about bright lights that are frequently found in parking lots. He felt that if a lower number of units were going on the site, a specialized parking area would not be necessary and that the site plan could reflect the type of parking that serves residential units in the neighborhood.

Secondly, Mr. Westin was concerned about the “square box” style shown on the site plan, stating that it would not be consistent with the architecture in the neighborhood. He pointed out that the City had invested over \$100,000 to renovate Hanscom Park and he hoped the Board would protect that investment by assuring the appropriate development of the site. Mr. Westin, as a member of the Neighborhood Association, along with several others, are pursuing Atlantic Heights neighborhood being listed on the Federal Register of National Historic Places, so they are concerned about the looks and the site development for the proposed structures. They are not against development of the site; rather they want it to be done in a responsible way and they feel that 8 units is too many.

Vice-chair Horrigan stated that the neighborhood is a mix of residential and commercial uses, and asked if the neighborhood group would prefer more residential or commercial. Mr. Westin replied that they were not against either commercial or residential but wanted to stick with the architect’s intended plan for Atlantic Heights neighborhood.

Mr. Berg asked if 8 units were too many, how many units would not be too many. Per Mr. Berg’s question, Mr. Westin agreed that if it were 6 units and “less square” he would not be opposed to the petition.

Robin McIntosh, resident of Atlantic Heights stated that she was not opposed to a building on the lot but that 8 units would be extreme. She stated that the residents of Atlantic Heights are proud of their neighborhood and have received preliminary approval to be listed on the Register for National Historic Places. She stated that the proposed lot is the entry for the neighborhood and she expressed her concerns regarding the scale of the building as well as its historic appropriateness of design as it relates to the Atlantic Heights neighborhood.

Ted Blood, Jr., owner of property at Atlantic Heights stated his agreement with the other abutters.

Attorney Pelech refuted the comments regarding a four-story structure, stating that the proposed structures would be 2.5 stories at most. He also clarified that it was not “low-income housing” but affordable housing. He also added that he did not grossly misrepresent the character of the neighborhood that has come a long way in the 33 years of his residence in Portsmouth.

Attorney Pelech addressed the parking layout. He stated that they had no intention of harming the park across the street or causing problems concerning registration on the Register for National Historic Places. They will attempt to build something that is architecturally in keeping with Atlantic Heights.

DECISION OF THE BOARD

Mr. Rogers made a motion to deny the variance as advertised and presented and it was seconded by Mr. Jousse.

He referenced a statement regarding undersized lots and suggested the unfairness of comparing the proposed square footage per unit to these dwellings that are decades old. He acknowledged that the proposed lot area per dwelling unit would be smaller than was required by zoning ordinances and was supportive a four-unit dwelling; however, Mr. Rogers felt a proposal of eight units would be an over-intensification of the area. He stated that the zoning restrictions do not interfere with the owner's reasonable use of the property allowing a less intense residential use.

Mr. Jousse agreed with Mr. Rogers, regarding affordable housing but stated that four units would be much more palatable and that he could not support the variance as proposed.

Mr. Witham and Mr. Marchewka agreed with Mr. Jousse, both stating their concerns about the type of square box-type building that might result, and how it would fit into the present architecture of Atlantic Heights.

Vice-chair Horrigan commented that in addition to two vacant lots, abutters included several residential streets that he felt would be impacted by the additional traffic generated if an eight-unit residential building were allowed. He felt that the proposed eight-unit dwelling could have some effect on the commercial buildings in conducting their business affairs.

Chairman LeBlanc called for the vote. The motion to deny was passed unanimously.

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**7) Petition of Christine Hayes, owner, Susan Henderson, applicant, for property located at 227 Cass Street wherein the following were requested: 1) Variances from Article II, Section 10-206(2) to allow a single family dwelling to be converted into a two family dwelling on a lot having 4,190 sf of area where 7,000 sf of area is required for two dwelling units (3,500 sf per dwelling unit), and 2) Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) are requested to allow a 16' x 28' two story addition with: a) a 0' left side yard where 10' is the minimum required, and b) 35.6% building coverage where 35% is the maximum allowed. Said property is shown on Assessor Plan 147 as Lot 3 and lies within the Apartment district. Case # 12-7**  
**SPEAKING IN FAVOR OF THE PETITION**

Susan Henderson, who was in the process of purchasing the property at 227 Cass Street, addressed the Board. She described her plans for converting a single-family dwelling into two dwelling units. She stated that the first floor would be one unit and by adding a 16' x 28' addition for a bathroom, mud room and bedroom, the requested addition would also allow the second floor apartment to expand the kitchen, to include a dining area as well as a study/office space.

Ms. Henderson explained her request for relief of the 10' left side set back, stating that the left side of the house currently had a 0' setback which would remain the same, and the expansion would occur in the back. Ms. Henderson felt that it would be in the public interest as it would provide a dwelling for two families. She also felt that it was a reasonable use of the property, as a two-family dwelling was allowed; and, with the variance, she felt it would make that two-family much more livable.

Mr. Jousse asked if they would be removing the garage and Ms. Henderson stated that it would be torn down as the foundation was unsound.

Chairman LeBlanc addressed Ms. Henderson's statement regarding the property being in a neighborhood that allows for apartments. They stated that the present footprint would meet requirements; however, the proposed addition would require granting of a variance as it would exceed the square foot restrictions.

Mr. LeBlanc told Ms. Henderson that in order to put any structure on to the property in the same plane, the footings would have to be within the city sidewalk area. He also spoke to the fact that the land had not been surveyed.

### **SPEAKING IN OPPOSITION TO THE PETITION**

Lauren Greenwald, 255 Lovell Street, stated that she was not opposed to building in the area but was opposed to the proposed project as it does not meet the city requirements. She stated that the house was built on the sidewalk and there was a history of problems with snow removal over the past 5 ½ years that she has lived there. No one had ever shoveled the sidewalk as there was no place to put the snow. Due to the aforementioned, she felt it would be contrary to the public interest as it would only exacerbate the current problem of snow removal.

Regarding unnecessary hardship and reasonable use of the property, Ms. Greenwald stated the applicant's option to turn this home into a two-family dwelling. She commented on the many square feet of potential living space available to the applicant on the third floor, without the need for a variance.

She stated that the 27 Cass Street home was built as a single-family dwelling in a neighborhood of single-family dwellings and expressed her concerns regarding visual, population and parking density if the ordinance were granted. She felt that density would be increased by allowing more people to live in this structure, than are currently able to live there. The owner would then have the potential to develop the third floor, increasing further the number of people who are able to live in the structure.

Ms. Greenwald referred to the Kierstead's property at 50 Lovell St., stating that the parking could be five to eight feet from their windows, which would result in an increase in headlights shining in their windows as well as exhaust fumes. She felt that the whole neighborhood would be impacted by increased parking as three of the four homes on Lovell Street do not have driveways and are required to park their vehicles on the street. She spoke about a proposed structure on the Corner of Madison and Lovell which might have 11 units and how that might further impact parking in the area.

Ms. Greenwald felt that if the variance were granted it would diminish the value of her property, creating parking constraints that would be a problem if they decided to sell their home. She felt that the applicant wanted/needed a large two-family dwelling and that they could find a dwelling within Portsmouth that was more suitable to their needs for approximately the same cost as the 27 Cass Street home and the proposed addition.

Helene Parkham, 239 Cass Street, a direct abutter to the 27 Cass Street property, expressed her concerns about the existing flooding and sewer back-up problems in the neighborhood, stating that all the neighbors had sump pumps in their basements. She had concerns that the proposed addition would exacerbate an already difficult situation in that area.

She also added her concerns about the parking situation, stating that the parking would definitely come on to her property.

Mr. Rich Collier, 203 Cass Street, spoke in opposition to the petition based on the existing flooding and sewerage backup problem in the neighborhood and how it would affect the public interest. He referred to a storm that had occurred seven years prior and that at a City Council meeting, it had been said that the issue was not simply one of flooding but an environmental and health issue. He felt that until these problems were resolved, permitting the proposed apartment would only add to the problem.

Ms. Dorothy Kierstead of 50 Lovell Street, a direct abutter, expressed her concerns about the added parking needs and how the exhaust fumes would enter her windows. She also stated concerns regarding the impact on her property if sewer pipes, which she felt ran under the petitioner's garage, were to be broken while demolishing the garage.

Susan Henderson responded to Ms. Greenwald's statements stating that they were within the requirements to make the 227 Cass Street property into a two-family dwelling. She added that multiple-family dwellings existed across the street and the variance would simply allow them to have a little more living space and a nice bathroom. She also stated that the third floor would become part of the second-family unit.

She felt that the water flow would not be impacted as they would be removing the garage and utilizing the same square footage off the back of the house. She proposed that the parking would be placed where the original garage now sits and would not be up against the abutting house. The present family parks on the street and Ms. Henderson's proposal would give them three parking spaces off the street.

### **DECISION OF THE BOARD**

Mr. Witham motioned that the petition be granted as advertised and presented and Mr. Marchewka seconded the motion with the stipulation that the parking be situated where the garage currently exists. After discussion, Mr. Witham amended the motion to include a survey of the property to determine the left yard setback and the stipulation that the parking be situated where the garage presently exists.

Mr. Witham stated that it was fairly consistent with the neighborhood to allow a duplex and that the walk space along the property line would remain the same. He felt that the snow removal situation would not change and the size of the lot could handle the density. He stated it would not be contrary to the public interest as there was a need for housing in the city and that the water problem would not be made worse. Mr. Witham stated that it would be a reasonable use of the property and would cause no injury as well as the fact that it would eliminate an old structure and allow off-street parking. He felt that it was within the spirit of the ordinance to allow the expansion of the building and would cause no resultant diminution of abutting properties.

Mr. Marchewka agreed with Mr. Witham, stating that the issue was density. He stated that the property could already be used as a duplex and that the requested addition was minimal. He felt having parking at the site of the present garage would be an improvement. He stated that the applicant will have to live with the water issue and that it was a Public Works issue. Mr. Marchewka said that he could support the request to grant.

Vice-chair Horrigan would not support the expansion, stating that the addition was very large given the 0' left side setback. He stated that it failed under the Public Interest criteria as it would perpetuate an already crowded stretch of sidewalk and make it difficult to remove snow. He felt that parking three cars on the footprint of the garage was not possible.

Chairman LeBlanc called for the vote to grant as presented and modified to require a survey to determine left side setback. The motion failed with a 3 to 4 vote and the petition was denied. Chairman LeBlanc, Mr. Holloway, Vice-chair Horrigan and Mr. Jousse voted in the negative.

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8) Petition of Olde Port Development Group, LLC, owner, for property located at 126 State Street wherein a Variance from Article XII, Section 10-1201(A)(2) was requested to allow a 10' wide access way to a parking garage for 5 vehicles where a 24' wide access way is required. Said property is shown on Assessor Plan 107 as Lot 57 and lies within the Central Business B and Historic A districts. Case # 12-8

Note: Mr. Jousse and Mr. Parrott recused themselves for the following petition.

SPEAKING IN FAVOR OF THE PETITION

Attorney Paul McEachern, representing the applicant, addressed the Board. He objected to a memo from Mr. John Burke of the Department of Public Works regarding his client's property.

Attorney McEachern questioned the correctness of the Building Department's need for a variance. He questioned the petition in regards to the term "accessway" versus "maneuvering isle". Lucy Tillman offered to re-advertise as a 24' maneuvering isle for the next month and Attorney McEachern declined.

He referred to plans used in the Historic District proposal, pointing out the proposed intent to use the ground level of the former Starlight Lounge for parking for five cars with a maneuvering isle. He further explained their proposal to allow for ingress and egress making comparison to Bullmoose that has similar underground parking.

Attorney McEachern stated that it would be in the public interest to provide off-street parking for five vehicles in the Central Business district. It would allow light and air to abutting areas, which would not otherwise exist if the building were built according to Ordinance. He stated the literal enforcement of the Ordinance would create unnecessary hardship by preventing reasonable use of the property. He felt that the Ordinance, which maintains that there should be a 24' access way, causes a problem by taking away from the streetscape and possibly hindering the addition of sidewalks.

Attorney McEachern felt that it was in the spirit of the ordinance to favor people over the dimensional requirements for cars. He felt that substantial justice would be done by placing dwellings and a parking area in the location of the former Starlight. He also stated that he felt the city was in error when asking for a variance and not issuing a permit based on the plan.

Chairman LeBlanc clarified that there would be a total of 9 units.

Lucy Tillman, planner, made a correction for the record, stating that the Historic District Commission did not act on an application. She stated that the applicant had been before the HDC for work sessions but they did not have an approval at that point.

Mr. Berg clarified that the maneuvering isle is not an access way and must be 24'.

Vice-chair Horrigan questioned the plan and the lot lines. Attorney McEachern stated that the plan was on the lot line on both sides. Mr. Horrigan felt that the plan presented an improvement over the present situation.

Mr. Witham mentioned that the site plan did not show green space.

SPEAKING IN OPPOSITION TO THE PETITION

Michelle Ziebart of 124 State Street addressed the Board concerning her fears regarding cars pulling out of a 10' egress on to Court Street, which is very narrow. She felt it would be unsafe and that parking was already a challenge in the area. She was concerned about the windows that would overlook their property if the proposed building were to be built.

Mr. Berg discussed with Ms. Ziebart whether she would be opposed to a 10' opening if the bumped-out area were not there. She said she would not be opposed as Mr. Berg suggested that the view would be improved in that instance.

Louise Richardson, 369 Court Street, who owns the property next door to 126 State Street, thanked Attorney McEachern for mentioning the width of Court Street as she felt that was very important. She explained how difficult maneuverability is, in terms of parking in that area and that during the winter, the snow is piled up against her 371 Court Street property. She stressed that the area provided for access and egress would be situated between two adjacent three-story buildings, hampering visibility. She also addressed her concerns about snow removal and fumes that would be the result of placing the access way as proposed.

Basil Richardson, 369 Court Street, and owner of 371 Court Street, stated that his building had been hit several times. He stated that a 10' access would necessitate folks making a quick, sharp turn to enter. He felt that the solution was unreasonable when the turning radius of a car is taken into consideration. Except for a very small car, standard sized vehicles would not be able to turn around inside the parking area. He felt that the plan was too cramped to work out.

DECISION OF THE BOARD

Chairman LeBlanc established that Mr. Richardson's rental building was three feet from the street.

Attorney McEachern stated that there would be five cars in the parking garage, all of the owners would know each other and they would not be travelling in and out at the same time. He felt that this proposal was a good one in that it would take five cars off the street.

Mrs. Richardson added that they had oriented the proposed "bump out" so that it matched the exactly with the front on their building, not including the 5' porch.

Mr. Berg moved to grant as advertised and presented. The motion was seconded by Mr. Halloway.

Mr. Berg commented that the Ordinance refers to a 24' maneuvering isle and they had provided a 24' maneuvering isle. He did not agree with the 24' access way requirement stating that it was impractical. He stated that no fair and substantial relationship exists between the general purposes and the specific restriction in the Ordinance. He felt that an adequate driveway of 10' was being proposed given the density of the city. He stated that it would be less of a problem, in terms of visibility and turning radius if the "bump out" did not exist. He said granting the variance would be within the spirit of the ordinance and it would increase the value of surrounding properties by bringing more residents into the neighborhood and renovating into a new building.

Mr. Witham offered the stipulation that the 10' drive be constructed with a heated-concrete slab for the purpose of melting snow. The motion was accepted by Mr. Berg and Mr. Halloway.

Mr. Marchewka and Vice-chair Horrigan agreed with Mr. Witham. Mr. Horrigan stated that a 24' curb cut would remove 24' of safe sidewalk, posing problems for pedestrian traffic. The 24' access would also pose problems for the abutters who wouldn't be able to enter their structures.

Chairman LeBlanc did not support the motion, stating safety concerns with visibility and turning radius as a result of having a building 8' away from the street.

Chairman LeBlanc called for the vote to grant as presented and advertised with the stipulation that the driveway into the property be a heated concrete slab. The motion passed with a vote of 5-2. Chairman LeBlanc and Mr. Rogers voted in the negative.

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9) Petition of **Estate of Bobby J. Smith, owner**, and **A. David Mann, applicant**, for property located at **920 Sagamore Avenue** wherein a Variance from Article III, Section 10-302(A) is requested to allow a 44' x 60' two story single family dwelling with: a) a lot area of 14,195 sf where 15,000 sf is the minimum required, and b) a 10' 6" rear yard where 30' is the minimum required. Said property is shown on Assessor Plan 223 as Lot 16 and lies within the Single Residence B district. Case # 12-9

**SPEAKING IN FAVOR OF THE PETITION**

Wendy Welton, Architect representing A. David Mann, felt that putting a house on the proposed lot would not be contrary to the public interest, as it would maintain the residential characteristic of the neighborhood. Special conditions exist in that the lot was too small. It would not injure the rights of others according to those with whom they have spoken. Substantial justice would be done as a house belongs in this residential area. She also felt it would enhance the value of the property as the new house would replace a derelict building and improve the orientation of the house which is presently too close to the road. They would orient the house to a Shaw Road frontage.

Mr. Halloway asked whether they had found the septic system. Ms. Welton said that they had walked the site with a septic designer and that the present system would need to be removed and a new septic system installed.

Mr. Jousse established that they would remove the present gas station.

Chairman LeBlanc asked whether they had looked into the septic system design. Ms. Welton indicated that were planning to do so but they needed the variance first. The site has been walked and flagged and the designer indicated that there shouldn't be any problem.

Lucy Tillman asked if any test pits had been dug. Ms. Welton responded that the real estate agent had done so but no one else had.

Mr. Fred Gray, 808 Sagamore Avenue, addressed the Board, stating that the property was a gas station back in the 30's and 40's and voiced his concerns about water run-off as a result of the positioning of the new home and the septic system. He also stated that old gas tanks might still exist along with oil residue from what he believed was an outside lift.

Mr. Russ Foster of Shaw Road, offered that the area is mostly ledge and any septic will have to be completely engineered for leach field capability. He felt that attention needs to be paid to the size of the proposed house on this lot, as it would result in heavier use of the septic system.

Ms. Welton responded that they intend to have a certified septic designer design the system. She added that the size of the house would be approximately 2,500 square feet and that if there were any gas tanks or hazardous waste, they would deal with that as well.

### **DECISION OF THE BOARD**

Chairman LeBlanc stated that a motion to grant would be contingent upon a satisfactorily state-approved septic system being installed.

Mr. Marchewka moved that the petition be granted as presented and advertised contingent upon the installation of a state-approved septic system. Mr. Witham seconded the motion.

Mr. Marchewka felt it was a minimal request as the lot was close to the required area, and changing the entry to front on Shaw Road is much safer. He felt that granting the variance would be in the public interest as it would replace a dilapidated building and overgrown lot and with an environmentally cleaned-up lot and a new home. He felt literal enforcement of the variance would prevent the building of a home and it would interfere with the reasonable use of the property. It is a unique setting with a building right on the road that should not be there. No fair and substantial relationship exists between the purpose of the zoning ordinance and the restrictions made on this property. It would enhance the public and private rights of others by allowing use of the property for a single-family dwelling and substantial justice would be done in removing an eyesore and potential hazard and replacing with the proposed property. It also would not diminish the value of surrounding properties but would enhance.

Mr. Witham agreed with Mr. Marchewka and commented that relocation of the house would help the visibility pulling out of Shaw Road. He also felt that the present lot was slightly under the square foot requirement.

Chairman LeBlanc called for a vote to grant as presented and advertised with the stipulation that before the building can be put up, a certified septic system be designed.

The petition was granted unanimously.

Chairman LeBlanc addressed the election of officers. After brief discussion, it was decided to make it the first item on the agenda for the January 6, 2004, Board of Adjustment meeting.