

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

7:00 P.M.

**MARCH 23, 2004
(Reconvened from
March 16, 2004)**

MEMBERS PRESENT: Chairman Charles Le Blanc, Vice-Chairman James Horrigan; Bob Marchewka, Alain Jousse, Nate Holloway; David Witham, Arthur Parrott, Alternate Steven Berg and Alternate Duncan MacCallum

MEMBERS EXCUSED: n/a

ALSO PRESENT: Lucy Tillman, Planner

Chairman LeBlanc stated that the first order of business was to approve the draft of the minutes for Petition #5 of February 17, 2004. Motion was made and seconded. The draft of the minutes of February 17, 2004 was approved.

Letters have been received to table, under Old Business, A, Children's Museum of Portsmouth; under New Business, #4, Aranosian Oil, #7, petition of Eric Spear, and #9, petition of William Morton. If there is no objection, Chairman LeBlanc asked that all be tabled at once. Upon motion by Mr. Holloway and seconded by Mr. Marchewka, the petitions were tabled until April 21.

I. OLD BUSINESS

A) Petition of **The Childrens Museum of Portsmouth, owner**, for property located at **295 Woodbury Ave and abutting lot on Woodbury Avenue**; and **The Hyder Irrevocable Trust of 1993, owner, for property located at 677 and 659 Dennett Street** wherein a Variance from Article II, Section 10-206 was requested to allow the Childrens Museum and 1,000 sf of office space for the Hyder Children's Foundation to be located in a district where such uses are not allowed. Said property is shown on Assessor Plan 161 as Lots 31 & 32 and Assessor Plan 175 as Lots 6 & 6A and lies within the General Residence A district. Case # 2-10

The Board of Adjustment, at its meeting of March 23, 2004, voted to **table** the petition until April 21, 2004, for a Special Board of Adjustment meeting.

B) Petition of **Lafayette Plaza LLC, owner**, for property located **2454 Lafayette Road** wherein the following were requested: 1) a Special Exception as allowed in Article II, Section 10-208(36) is requested to allow 2,400± sf car wash in a district where such use is allowed by Special Exception, and 2) a Variance from Article III, Section 10-304(A) to allow a 75' front yard where 105' is the minimum required. Said property is shown on Assessor Plan 273 as Lot 3 and lies within the General Business district. Case # 2-11

SPEAKING TO THE PETITION:

Mr. Pelech reported that he had just received news that his client, Thomas Hammer, wished to have his petition #6, 102 Mill Pond, tabled until the next meeting. He wished to give notice to any people at the hearing so they would not have to sit through a couple of hours.

Mr. Bernie Pelech, representing Lafayette Plaza LLL, owner of 2454 Lafayette Road, addressed the Board. This is the location of the so called South Gate Plaza. In the northeast quadrant of the property, last month the Board approved a Wash Me Now car wash for this location. This proposed

car wash is in this location, which is in a very little used, never used portion of the existing parking lot. This abuts Water Country and the Wash Me Now car wash approved last month. This is the remainder of the South Gate parking lot. What is being requested is a 3-bay car wash. Two of those bays would be self-serve where you get out of your car and spray. One would be automated where you stay in the vehicle and watch. At the present time it is not intended to recycling at this facility. If the site review technical review committee feels it appropriate, then his client will consider it. He is seeking two methods of relief. The first being a special exception as allowed in Article II, Section 10-208(36) to allow a 2,400 square foot car wash where the use is allowed by special exception. Secondly, the variance, which is troublesome, is something that he did not really think was needed, but they were applying for it. The variance is required by Article III, Section 10-304(A) to allow for a 75' front yard where 105' is the minimum required. If you look at the zoning ordinance, just dealing with the ordinance very quickly, the variance describes a front yard as the distance between a building and the street right of way. There is 350 feet from Lafayette Road. The distance is 75 feet from the front property line, but 325 feet from the street right of way.

This lot is located in the general business zone. All surrounding use is commercial in nature. This is a use that is permitted by special exception providing that all six requirements are met for a special exception. Those are as follows:

- 1) Repairs and service work will take place within the enclosed building. No repairs anticipated, but anything required will take place within that building.
- 2) No vehicles in an inoperative condition will remain on site. This is a car wash, not a repair facility.
- 3) Screening will be placed on the side and rear property lines to separate from residential. This is not applicable as there are no residential abutters.
- 4) All pump islands shall be set back at least 40 feet from property lines. This is not applicable as there are no pumps, and this is not a service/gasoline station.
- 5) There shall be no more than two 40-foot wide curb cuts for access or egress points on each abutting street. Once again, the applicant does not anticipate any curb cuts.
- 6) The minimal front yard shall be 50 feet, side and rear yards shall be 50 feet, except as required by Section 10(308), which says 105' minimum from Lafayette Road. His client is 325 feet from Lafayette Road.

No underground recycling tanks are anticipated. With regard to the chemicals that are being used, members of the Board will remember last month's presentation by Wash Me Now. Ninety percent of all car washes use basically the same six chemicals. His client will provide a list of brand name chemicals that are being used for the public works department and the fire department. There is no detriment to property values in the general vicinity. There are no residential areas near the site, and the scale of the building is in keeping with the other neighboring structures. This should not have an impact on the level of traffic nor create a traffic safety hazard in the vicinity. The parcel is 18 acres in size. This should not be contrary to the public interest. This application is one half the size of the plan approved last month. Mr. Pelech called upon John Chagnon of Ambit Engineering, who stated the car wash would not create any excessive demand on municipal services. Water is the primary concern. He estimated the average use would be 7,000 gallons per day. There would be no increase in storm water run off to adjacent property. It is a totally paved parking lot.

In conclusion, Mr. Pelech addressed the icing issue and concerns about the icing on to public streets. He said the design was planned to be well in excess of 850-900 feet from the time left the car wash and the time it reached Lafayette Road. This would probably be the longest run in the city.

Mr. Pelech said a hardship existed as a zoning ordinance interferes with the use of the property because there is an intervening lot between that portion of Lot #3 as shown on Tax Map # 273. The

actual distance between the proposed car wash and Lafayette Road is 325 feet plus. To require the applicant to be set back 105 feet from the rear of Wash Me Now is unreasonable and certainly interferes with the reasonable use of the property. Secondly there is no fair and substantial relationship between the purpose of the ordinance, which is to keep buildings at least 105 feet from U. S. Route 1 in anticipation of the future widening of Route 1. The proposed car wash would not diminish surrounding property values by virtue of its location. Substantial justice would be granted. There would be no benefit to the general public by denying the variance request. He said granting this variance would definitely not be contrary to the spirit and intent of the ordinance. Granting the request will not be contrary to the public interest.

Mr. Horrigan said he had a question in regard to the water usage. He said the previous petitioner had cited that 16,000 gallons would be a day, that would be approximately 5.5 million gallons per year, which is a substantial amount of water. The current petitioner said 7,000 gallons per day, which would be approximately 2.5 million gallons per year. Mr. Horrigan wondered at what point these car washes would become a burden to the City's water supply. He said it sounded like a large marginal increase to him. Mr. Pelech said he reviewed the minutes of the previous meeting and the materials submitted by Mr. Loughlin,. He had listed the ten largest users of the City's water, and all were substantially greater than his 16,000 gallons per day. Mr. Horrigan also asked Mr. Pelech's client would be open to a stipulation that the City would have the option to shut down the operation in periods of drought. Mr. Pelech said he would only be agreeable to such a stipulation if the same stipulation had been placed on the approval that was granted last week for over twice the consumption that his client was talking about. Further, if there were a drought and his client was asked to shut down but none of the others were asked the same, then he would find that detrimental so he could not agree to that stipulation.

Mr. Horrigan questioned a possible stacking problem of cars attempting to enter the car wash from Lafayette Road. He asked what provisions Mr. Pelech's client had set up to avoid merging of these two lines of cars. He asked where the stop sign was located. John Chagnon commented on the two alternatives regarding traffic flow. Mr. Horrigan said he found entry to the lot itself very confusing, and he would not know which line to get in. Further, he would not know how to get in to the shopping plaza. He said without some indication of what was being proposed, he would be very doubtful about granting the special exception dealing with traffic conditions. Traffic inside the parking lot is traffic that the citizens of Portsmouth will have to deal with, both going to the car washed and to other business on site. John Chagnon said he thought it would be appropriate in the site review process to look at those issues again to decide which is the best way to develop

Mr. Horrigan said he had another question about drainage. He said the Board was told it was an impervious surface, which is true, but will there be drains and some other provision for water and chemical run off? Mr. Chagnon said the New Hampshire DES fact sheet identified four permitted types of systems: 1) closed system with waste water recycling; 2) discharging into a municipal sewer; 3) obtaining a ground water discharge permit; and 4) facilities that wash fewer than 30 vehicles a week. All four types of systems are permitted under the State Department of Environmental Services. The second type of system is what is being proposed at this point. It is an approved type of discharge subject to a municipality accepting that. This something that would be brought up at site review and worked out with the Public Works Department to make certain to meet codes. Mr. Chagnon also referenced the copy of a web page which detailed water usage by home use versus a car wash. He said to keep in mind that the car wash in replacing activity which used to occur within people's homes. Car washing at home was unregulated discharge of soaps.

Chairman LeBlanc asked about the slope of the parking lot in front of the facility? Mr. Chagnon said it was in the 2-4% range, which equates to 2 to 4 feet in a 100-foot horizontal distance.

Mr. Pelech distributed copies of the definition of front yard in case Board members did not have a copy in front of them.

The public hearing was closed.

DECISION OF THE BOARD

Mr. Horrigan moved that the variance be approved as advertised and presented. Mr. Holloway seconded for discussion. Mr. Horrigan said he agreed with the attorney's basic argument that the facility would be more than adequate distance from the front yard and therefore from the right of way on Route 1. It is also an appropriate distance from the other car wash facility which will be sitting to its south. He did not see any public interest question. There is no question of impact on values of surrounding properties. He could see no issue of justice involved. He felt the spirit of the ordinance was to provide adequate distance from the highway. In regard to hardship, it is a reasonable proposal to locate that facility that distance from the highway. Mr. Horrigan said it appeared to him to be self-apparent to grant the variance. Mr. Holloway said he agreed with Mr. Horrigan. Chairman LeBlanc said that he would like to add that this is in fact the front line of the property. Just because it takes a little turn and up, this does mean that it is not front property line. He said it was a valid request for a variance, and he agreed with Mr. Horrigan that the conditions are more than met for granting this variance for this particular property.

It was unanimously voted to grant the variance as advertised and presented.

Chairman LeBlanc advised the Board that the matter of special exception needed to be addressed.

Mr. Horrigan moved that the special exception be denied as advertised and presented. Mr. Marchewka seconded the motion.

In dealing with special exception, Mr. Horrigan stated that most of this is not a variance request, and if the petitioner can satisfy the six basic standards are met, then the Board should grant it. He believes he has satisfied at least four of those, but Mr. Horrigan remains unconvinced on the impact on traffic. He said the presence of two car washes on this site in such close proximity to the entrance of a major mall off Route 1 simply an invitation to disaster. He could not understand how the petitioner was going to plan traffic in and out of the shopping mall that would be safe for all concerned. He remains in such great doubt that he said he could not support the petition. He also has some question about the demand on water supply, but is firm on the matter of traffic congestion. He said it was a bad idea.

Mr. Marchewka said he was in basic agreement with Mr. Horrigan. He said it seemed like a convoluted situation with two car washes. One of them came first, and the Board granted a special exception for a car wash last week. However, the addition of this car wash would seem to wreak havoc in that parking lot. There is really no delineation of how to get in and out. The building is situated right next to the shared easement that presumably people would use to get in and out of the other car wash. He said it did not look like a great traffic situation and looks dangerous. He said he could not grant this exception.

Mr. Parrott said that he though this facility could be designed to work but not in its present condition. As he looked at the requirements for special exception, he did see on the plans any traffic control channeling methods. There is nothing in the lot or proposed in the plans that would force the traffic to take the route as presented to the Board. It would be assumed that the cars would get off Lafayette Road at the light. The second would be coming in the frequently used entrance which is behind the Taco Bell and Ninety Nine Restaurant, which cuts directly across to the facility, which would be the logical way to get to it. The third way would obviously be traffic attempting to leave the shopping center after having visited the stores there and cutting left across the oncoming traffic. It strikes him as a free for all. He understands this has to go to Planning Board and Site Review, but he thinks it would be not responsible for this Board at this time, given the lack of engineering by the owners of this shopping center, to grant without some further engineering and careful consideration of the traffic.

Mr. Witham said he supported Mr. Parrott. He said if there had been a motion to grant this, he would have supported it, but he also generated a long list of stipulations as he had a lot of concerns. Safeguards were in place in that this would have to go before Site Review. He agreed with Mr. Parrott that more engineering needs to take place in terms of more curbing, striping, and whatever needs to

what was being said. Any of the petitioners can voice their opinions against the overview that is presented to the Board.

As a result of consideration, it was unanimously voted to **deny** the request for rehearing.

II. PUBLIC HEARINGS

1) Petition of **T-Beyar Realty, LLC, owner**, and **BISCO, applicant**, for property located at **141 Banfield Road, Units 5 & 8** wherein a Special Exception as allowed in Article II, Section 10-209(38) was requested to allow an 18' x 25' yard area for the outdoor storage of irrigation equipment. Said property is shown on Assessor Plan 254 as Lots 2 & 3 combined and lie within the Industrial district. Case # 3-1

SPEAKING TO THE PETITION:

Attorney John Flagg, representing the applicant, addressed the Board. He referenced plot plans that had been given to members of the Board. The property has wetlands on both sides and out back is the Iafolla gravel. The location of the outdoor storage is noted on the plan. A correction needs to be made in the application to reflect the size of the structure as 25' x 18'. The whole side of the building is all parking spaces, which have to be 19 feet.

What will be placed inside of this storage area are all items that are intended to be put in the ground as an end use. The company is a wholesaler of water sprinkler equipment systems. What they will be storing out there is PVC water pipes, 20' lengths and various sizes from ¾" to 3"; polyethylene pipe in coils from ¾" to 1 ½"; and valve and meter boxes of various sizes and plastic in nature. All of these items are installed in the ground. They will be stored within the 18' x 25' area. The fence will be a chain link fence 8 feet in height. There will be no barbed wire. There is no issue with explosive or toxic materials. There is no detriment to property values in the vicinity. This is on the back of the property, and it cannot be seen from Banfield Road. There are no buildings on either side that is wetlands area. There are no buildings in the rear, just big piles of gravel. There will be no increase in the level of traffic. It will take up some parking spaces, but this site needs 27 spaces but it has 36. None of the municipal services listed apply in this case. There is no significant increase in storm water runoff into adjacent property or streets. It does not apply to this application. Also included as an exhibit is a letter from BISCO which describes the items to be stored. Mr. Flagg said a representative from BISCO was present if there were any questions.

Mr. Jousse asked why the storage was outside rather than inside the building. Mr. Flagg said that the business was very much seasonal. There are times when there is too much to store inside. Secondly, the way the 20' PVC pipes are unloaded, it is easier to take them off and set them down inside the fenced in area than to turn sideways and onto a loading bed. It is mostly the seasonal issue. Mr. Jousse asked if there were going to be a gate. Mr. Flagg said yes, the sides would come out 18 feet with a rolling 25' section.

Mr. Parrott asked if this would be covered by roof. Mr. Flagg said it would not.

Mr. Horrigan inquired about the ingress and egress. He said it looked the rear was for loading. He asked if there would enough room for large trucks to maneuver around the rear of the building. Mr. Flagg said there were two loading areas in the front of the building designed for use by large trucks. It is always designed to get vehicles around even with cars parked.

Speaking to the application, Mr. Ecker, owner of property at 422-425 and 875 Banfield Road, addressed the Board. He is concerned about the water line and the electric line put in underground. The road around it is a real mess, and he thinks it should be cleaned up. Now that there are things going in there, he is concerned about the septic system. He also expressed concern over chemical

contrary to the public interest. To the extent that the use, while it is a nonconforming use, it has been approved for a variance. What is being done is simply moving the location of the use and reducing the size. Requiring the applicant to build this building at the front of the property closest to the residential abutters as originally advertised would interfere with the applicant's reasonable use of the property. The rear of the property is better suited for the intended use given that the land abutting the rear of this property is zoned industrial, and it is not likely to be occupied by the applicant when not in use. It is unlikely to present any greater burden upon the City, its residents, or resources in the approved location or size. What is being done is reducing the scope of the facility and moving it to a better location on the lot. The restriction on the property in this case is placing the building at the front of the lot. By granting the variance it would result in substantial justice by decreasing the size. Granting the variance would not be contrary to the spirit and intent of the ordinance.

Mr. Horrigan stated that on the previous approval there was a list of stipulations. Would the petitioner abide by these stipulations again? Mr. McEachern said yes. Mr. Horrigan said that as he recalled the testimony by the residential abutters, moving further back seems like a good idea from their prospective as they were concerned about noise. Mr. Horrigan inquired about the Phase II development on the plan. Is that Knights of Columbus also? The further area depicted on the plan is going to be for another user. It is not going to be for the Knights of Columbus. It is not known who that user will be yet. For the record, this site, under a previous owner, was approved for a 2-building 24,000 square foot office complex. It is capable of holding two buildings.

DECISION OF THE BOARD

Mr. Jousse moved that the variance be granted as presented and advertised. Mr. Parrott seconded the motion.

Mr. Jousse said this request is not contrary to the public interest. As mentioned earlier, in the previous presentation two years ago, the residents from across the street were concerned with the traffic and the noise at night being generated by this function hall. By moving it to the rear of the property, it creates a large buffer between this building and the residents across the street as presently the whole lot is wooded. The zoning restrictions that apply to this property would interfere with the reasonable use, and we have already found that the variance was granted two years ago. This is much better. The surrounding properties would not be diminished in value by the existence of this proposed function hall.

Mr. Jousse listed the stipulations as presented at the meeting held two years ago:

- 1) That access from Lafayette Road be limited to "in" only.
- 2) That the rear service road be extended to provide access to this site.
- 3) That there be no outside dining/bar/entertainment area provided for the fraternal organization or its lessees.
- 4) That the State Liquor Permit cannot be transferred to a new owner/entity if the property or shares in a holding entity are ever sold.
- 5) That the "*Phase II Development Area*," found on the preliminary site plan, is not being granted any permissions tonight.
- 6) Any and all previous development approvals by this Board are void.

Mr. Parrott agreed with all the previous comments, but he wished to address the issue of the Phase II development area. It is a very unusual notation, and he would like to state that his second of this motion was based on the fact that previous approval of two buildings on the property is void, and secondly, that the notation on the plan no way approves any future development of the same lot..

If those stipulations are appropriate, he wanted to make them part of the motion. He is concerned that this lot has had many proposals over the years, and he just wanted to clarify.

As a result of this consideration, it was unanimously voted that the petition be granted as presented and advertised with the six stipulations as noted.

3) Petition of **Richard P. Fusegni, owner**, for property located at **1574 Woodbury Avenue** and **D & P Shopping Center, LLC, owner**, for property located at **1600 Woodbury Avenue** wherein the following were requested: 1) a Variance from Article III, Section 10-304(A) to allow: a) a 10' right side yard where 30' is the minimum required, and b) a 16' rear yard where 50' is the minimum required, 2) a Variance from Article V, Section 10-504(D) to allow a dumpster 5' from the rear property line where 10' is the minimum required; and, 3) a Variance from Article XII, Section 10-1201(A)(3)(e)(2) to allow required parking 20' from the front property where a 40' setback from the front property line is the minimum required. Said property is shown on Assessor Plan 238 as Lots 16 & 17 and lie within the General Business district. Case # 3-3

SPEAKING TO THE PETITION:

Mr. Bernie Pelech, representing Ruby Tuesday's, the applicant, and D & P Shopping Center, LLC, one of the property owners. Like the previous petition, this is basically an amendment to previously granted variances because the building has been downsized. As has been pointed out in Lucy Tillman's memo, Board members may recall this virtually same plan was approved by the Board. Only at that time the building was 10 feet longer. The last time we were here the Board approved a 6-foot rear yard setback. This has been enlarged to 16 feet. The side yard set back is the same as was previously approved. The third variance with parking 20 feet from Woodbury Avenue is the same variance. Behind the building is a screened dumpster being requested this evening. Basically the proposal is the same proposal as requested before and received the necessary variances. Those variances were extended, and just recently those variances expired. In the interim this plan has appeared before the Technical Advisory Committee and the Planning Board and received site plan approval from the Planning Board.

The site is a difficult site at best, and this Board has on two previous occasions granted relief. When the Durgin Square shopping center was built, the City of Portsmouth Planning Board required that a substantial buffer be placed around Mr. Fusegni's residential property to buffer from the Durgin Square shopping center. When it previously went through the Zoning Board and the Planning Board, there was no signalized intersection at Woodbury Avenue and Commercial Way although it had been proposed. It is now in operation and will continue to be in operation. This will become the fourth point to that signalized intersection. Traffic engineers have worked with the City to coordinate the signals, and that will be operational once all approvals have been received. As indicated in the memorandum, the Fusegni lot is nonconforming as to size. Not only is its use a nonconforming use, but the buildings do not meet on front, side, or rear setbacks. The proposal you see is for a downsized building. It has dimensions of 50 feet by 90 feet. It was previously in excess of 50 feet by 100 feet. The square footage of the footprint has been reduced by almost 700 square feet. Sixty-two parking spaces will be provided on site where 60 are required. In the previous proposal, all the parking required could not be provided on site, and permission for a variance had to be obtained from this Board to allow 7 or 9 parking spaces in the Durgin Square parking lot. There is now more parking on the site than is required. Parking would be located 20.5 feet from Woodbury Avenue. That is the same as the previous plan and the previous variance granted by the Board. As indicated, the site would be accessed by the fourth point of the intersection which would also be a new centralized access way to the Durgin Square shopping center, which would hopefully alleviate some of the congestion at the other two intersections that are signalized intersections to the Durgin Square shopping center. One is near Applebee's via Arthur Brady Drive, and the second one is across from BJ's. This would be a third entrance into the shopping center. As indicated, four variances are being requested.

This is a conforming use and is certainly not contrary to the spirit and intent of the ordinance. Granting this petition would be in the public interest. The tax base for the City of Portsmouth will also be enhanced. The

Board granted the variances a little over two years ago, and the situation has not changed. The criteria were met then and now. This is a downsized proposal that allows all the parking to be on the same lot.

Mr. Witham questioned the site plan and the buffer zone showing trees. He said it did not appear to show the size or height of the trees. Mr. Pelech said that the trees on the plan did not exist but they were proposed. He said that whatever Lucy Tillman feels appropriate will be added to the plan as a condition of approval.

Mr. Horrigan also had a question in regard to landscaping. He said that when this was first brought to the Board in 1999, there was a City Arborist to oversee landscaping concerns and approve number of trees. The Planning Department has taken over that responsibility. Ms. Tillman said this was a new request so it would also be a new stipulation. However, the Planning Department has been acting to approve landscaping plans in accordance with the zoning ordinance which specs out the number of trees, distance, and caliber. Mr. Horrigan asked if there would be trees. Ms. Tillman replied, "absolutely."

Mr. Berg asked if there were any possibility that the parking lot from Ruby Tuesday's and Boston Market will poke through. Ms. Tillman said no, but one of the original proposals had a connector. Nobody really wanted it for a number of reasons such as traffic-wise or grade-wise. Chairman LeBlanc asked about the property in back being 10 feet higher than the front. It would be graded appropriately.

The public hearing was closed. Chairman LeBlanc advised that Board that they needed to address some variances.

Mr. Witham asked if there were standards for minimum vegetation. Ms. Tillman said there were. Mr. Witham asked if it would be possible for the City to ask for more than the minimum. Mr. Witham said he thought if they were asking for parking to be closer than what was allowed, then there should be a little extra vegetation added as a buffer. He was not suggesting a line of trees which would hide the restaurant but something creative to give it a little balance. Ms. Tillman said the final plan would be taking into consideration the line of sight down the street, what can be put in, and what is salt tolerant. The minimum will be met, and the City will work with them to create an attractive border along Woodbury Avenue. Mr. Witham said, as he mentioned earlier, lots of times plans show trees and plantings around parking lots, but they don't look that good in reality. Ms. Tillman said that there is actually some mature landscaping along Woodbury Avenue. Some trees put in five or six years ago are now growing successfully and filling in. Mr. Horrigan said he agreed that Woodbury Avenue on that side is looking much better thanks to what has been planted there and is consistent with some of the other properties. He said the other side of Woodbury Avenue needs a lot of work. He said he did not want to see a bunch of juniper bushes that would just collect cigarette butts and beer cans, which is often what you get. Somehow the Board needs to convey that it wants something nicer. Chairman LeBlanc stated that this request could be made a stipulation.

Mr. Parrott asked where this matter stood in regard to site review. Ms. Tillman said it has current site review approval. Mr. Parrott said he was a little concerned as earlier this evening there was a question as to whether trees existed or not. He did not feel the site review was very rigorous. Mr. Pelech disagreed. He said it was very thorough. He said both he and Ms. Tillman both knew the trees on the plan did not exist. He recognized that the standard condition of the Planning Board is the landscaping put in be approved by, it used to be the City Arborist, the Planning Department, and Ms. Tillman is designee. Mr. Pelech said he did not have any problem with Ms. Tillman approving it, and he had no problem with a stipulation that the landscaping be consistent with the other landscaping on that side. Mr. Pelech added that the Durgin Square people used a lot of good flowering shrubs such as crabapples and flowering fruit trees which have grown really well. Mr. Pelech said his client would be happy to be consistent with that to complement the overall plan

DECISION OF THE BOARD

Mr. Parrott moved that the petition be granted as advertised and presented with the stipulation that the landscaping be more than the minimum required by the ordinance so as to enhance the appearance of this property, and that the details be worked out with the Planning Department. Mr. Witham seconded the motion.

Mr. Parrott said the requested variance would not be contrary to the public interest. That is pretty self-evident as this is clearly a commercial area. No one has come forward to state that they have any right, either public or private that would be interfered with. The spirit of the ordinance is clearly to promote that part of Woodbury Avenue for commercial purposes. This would be consistent with existing development that has been going on for many years. The property has been owned by the present owner or the inheritor of the property for a long period of time. This is a commercial use, which is consistent with surrounding uses. It would be justice to grant this particular set of variances. Lastly, granting the variance will not diminish the value of surrounding properties. They are all entirely different in character. All five of the main points can be satisfied.

Mr. Witham agreed with Mr. Parrott. There are three variances here, all of which have to do with setbacks. There is no adverse effect on any of the surrounding properties. The front setback, allowing 20 feet where 40 feet is required, is allowable and reasonable in this situation since it is very consistent with the area. That 40-foot rule was established for a reason to provide a buffer. That strongly justifies the Board asking for more than the required landscaping. He thought that was a reasonable trade-off to ask for improved landscaping because the area required was reduced. The variances requested are grantable considering the stipulation attached.

As a result of such consideration, it was unanimously voted that the request be granted as advertised and presented with the following stipulation:

- That the landscaping be more than the minimum required, and that the details be worked out with the Planning Department.



4) Petition of **Aranosian Oil Company, Inc., owner**, for property **located at 1166 Greenland Road** wherein the following were requested: 1) a Variance from Article II, Section 10-209 Table 5 to allow 3,588 SF of convenience store and an 864 SF car wash in a district where such uses are not allowed, 2) a Variance from Article IV, Section 10-402(B) was requested to allow: a) a 24' x 97' gas canopy with a 46' front yard where 70' is the minimum required, and b) a 30' x90' truck fueling canopy with a 0' left side yard where 13.9' is the minimum required; and, 3) a Variance from Article IV, Section 10-401(A) and Section 10-401(A)(1)(c) to allow the existing convenience store (approved by court order) and the canopy to be moved and a car wash to be installed where a nonconforming use of land may not be extended into any part of the remainder of the lot of land. Said property is shown on Assessor Plan 279 as Lot 2 and lies within the industrial district. Case # 3-7

The Board of Adjustment, at its meeting of March 23, 2004, voted to **table** the petition to the April 20, 2004 meeting.

5) Petition of **T-Beyar Realty LLC, owner**, and **Auto One Automotive, applicant** for property located at **141 Banfield Road Units 4 & 9** wherein a Variance from Article II, Section 10-209(13) was requested to allow an auto repair business (small cosmetic & dent repairs to autos & RVs, mobile service, and repairs to wood, leather & vinyl) in addition to repairs to marine craft, home and office furnishings located within 225' of a residential district where 500' is the minimum required. Said property is shown on Assessor Plan 254 as Lots 2 & 3 combined and lie within the Industrial district. Case # 3-6

SPEAKING TO THE PETITION:

Mr. Pelech, representing the owner and the applicant, addressed the Board. 141 Banfield was not originally designed as a warehouse. It was designed as a multi-use industrial building. It once had 12

units and now has 13 units. This is an industrial zone. As Mr. Horrigan pointed out, the uses around it on three sides are certainly industrial. Across Banfield Road there is a single-residence A district. There is a glitch in the ordinance, which says that if someone wants to do anything automobile related, you must be 500 feet from any residential zone. There are two pieces of property across Banfield Road. One is the Temple Israel cemetery, which is zoned residential. The other property is the Hett Trust property, which is undeveloped. It is undeveloped, largely because it has large areas of wetlands on it. Those large areas of wetland have 100 feet of wetland buffer around it and two Public Service Company easements. Although this property is located within 500 feet from a residential district, realistically there is never going to be any houses.

Mr. Pelech said that Mr. Carrigan of Auto One Automotive is here this evening if there are any questions. He said Auto One Automotive does a number of things but it is basically light cosmetic repair of automobiles. He does some pulling out of dents, but no spray painting. It may involve some touch-up painting. The majority of Auto One's business is repair to interior of vehicles such as upholstery repair, vinyl repair, and in fact he does repair on boats and vinyl and leather furniture with tears. It is not your typical auto repair facility. There are no lube oil or tire changes. Mr. Carrigan or one of his employees would be inside the building working on someone's antique vehicle being restored. He could be repairing the upholstery on a boat. Automobile facilities are now allowed in this district. He is here because this lot is within 500 feet from a residential site across the street.

This is not going to cause any diminution of value in any surrounding properties. As Mr. Horrigan pointed out, it is surrounded by mountains of aggregate behind the property. Wetlands and Ricci Construction are to the south. Across the street is the cemetery and the undeveloped Hett property. This is not a Midas Muffler type of repair facility. Substantial justice will be done. There is a need for this type of service. Mr. Carrigan has been looking for a location in this area. This is one of the good things about 141 Banfield. There are a number of small spaces that small companies can afford. Within two months after this building was completed, people were lined up trying to occupy these spaces. It is good for Portsmouth. It is a piece of property that certainly no one ever thought would be developed. It is a benefit to the City. It is enhancing the tax rates. It is employing people from the city of Portsmouth. It is providing services that don't exist presently in the City of Portsmouth. This is not contrary to the public interest. As a result, substantial justice would be done by granting the variance. There is no benefit to the public in denying this application.

Mr. Pelech said he could understand why the ordinance was enacted in 1995 to put in a 500-foot buffer. Rarely is there a situation where an Industrial zone abuts a Residential district. Here they are one against the other and have been for 50 years. This type of use is somewhat of a buffer. The spirit of the ordinance will not be violated if this variance is granted. This will be to the benefit of the public interest in that it will provide a service, provide jobs, and it will not put any kind of demand on City services. It has approved septic and is state of the art. Mr. Carrigan has indicated that there are no hazardous materials kept on site, and he has agreed to work with the fire department. Mr. Pelech said he thought all five criteria had been satisfied.

Mr. Horrigan said he had no problem with the repair business. His concern is that in the past similar businesses on Banfield Road almost across from residential properties, the outside of the businesses is essentially cluttered with cars waiting to be repaired or sold or whatever. This particular property sort of nicks the residential zoning. Also, the cemetery across the street deserves some respect from all of us. Their descendants will be visiting the cemetery. He was concerned about inflicting an unsightly operation. He asked what assurances were there that this did not become a used car operation. Mr. Pelech stated that Tina Montgomery, representing the owner, would not allow parking of vehicles on the property. She has very strict standards. There are provisions in the lease which prevent outdoor storage. She refused to lease property to potential tenants who would not agree to the parking restrictions. Mr. Horrigan said he would like a stipulation in regard to parking.

Mr. Parrott asked if there were any pits or floor drains. Mr. Pelech said there were no pits, and he did not think there were any floor drains. He said he thought the floor was pitched without any burms of containment around the floor.

6) Petition of **Thomas M. Hammer** and **Dierdre Veo Costabile, owners**, for property located at **102 Mill Pond Way** wherein a Variance from Article III, Section 10-302(A) was requested to allow the construction of a two family dwelling on a lot having 12,064 sf where the minimum required is 15,000 sf of lot area for two dwelling units (7,500 sf of lot area per dwelling unit). Said property is shown on Assessor Plan 143 as Lot 7-2 and lies within the General Residence A district.
Case # 3-4

The Board of Adjustment, at its meeting of March 23, 2004, voted to **table** the petition, as verbally requested by Bernard Pelech, Esq., to the April 20, 2004 Board of Adjustment meeting.

7) Petition of **Eric A. Spear** and **Jean C.M. Spear, owners**, for property located at **57 Mt Vernon Street** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow the construction of an 18' X 24' one-story addition on the same footprint of the existing garage (to be removed) with a 1'8" left side yard where 10' is the minimum required. Said property is shown on Assessor Plan 111 as Lot 31 and lies within the General Residence B and Historic A districts. Case # 3-5

The Board of Adjustment, at its meeting of March 23, 2004, voted to **table** the petition to the April 20, 2004 Board of Adjustment meeting.

8) Petition of **T-Beyar Realty, LLC, owner**, and **Northeast Conversions, LLC, applicant**, for property located at **141 Banfield Road Units 2, 10, 11 and 12** wherein a Variance from Article II, Section 10-209(13) was requested to allow an automotive warranty service business located within 225' of a residential district where 500' is the minimum required. Said property is shown on Assessor Plan 254 as Lots 2 & 3 combined and lie within the Industrial district. Case # 3-6A

SPEAKING TO THE PETITION:

Mr. Bernard Pelech, representing the owner and the applicant, addressed the Board. These four units are three units in the rear and one in the front of the building at 141 Banfield Road. The argument is the same as in the previous application regarding all of the five criteria as all of the five criteria apply to the land. Also, this is again not your typical automobile repair facility. The president of Northeast Conversions, LLC, David Brigham, is here tonight and will be available to describe what "warranty repair service" is. Once again, all of the repair work that is taking place will be within a closed building. In this case, there will be company vehicles that will be parked at the rear of the building. Again, there will not be any outside storage of vehicles waiting to be repaired. There will be no outside storage of materials. All other restrictions can be complied with as in the first application.

Very briefly, Mr. Pelech said the criteria for the granting of the variance is met. There is a hardship affiliated with this land on Banfield Road directly adjacent to a Single Residential A district and an Industrial zone. This leads to a situation where there is a permitted use which is not permitted due to the proximity of the site to the Single Residential A district. It is a unique situation because the residential structure is 650 feet away, which is the welding shop on the same side of Banfield Road. Chances of any future residential use across street are very minimal and slim. There is not any fair and substantial relationship between the purpose of the ordinance as it is applying to this particular piece of property because the purpose of the ordinance can be maintained at this particular piece of property given the nature of the uses across the street. All of the uses are within the building. Northeast Conversion is not noisy. It does not generate noise, smoke, odor, dust or any of the other elements which tend to reduce the value of surrounding property. It is not going to generate a large amount of traffic, substantially increase traffic in the area, or change characteristics of the area. Substantial justice will be done because the hardship on the owner is not outweighed by a benefit to the general public were the variance to be denied. This is a win-win situation of benefit to the general public. The spirit of the intent is to keep automobile repair facilities from being too close or from disrupting

residential neighborhoods. There is no residential neighborhood that would be disrupted and very little potential that one would come into being. This is not contrary to the public interest. This is on a septic system so city sewer is not a question. It is not using an excessive amount of water. Fire and police protection is not going to be required on a frequent basis.

David Brigham, president of Northeast Conversion, addressed the Board. Primarily they are a handicap mobility dealer. They supply mobility full-size units. When they take seats or rear seats out of vehicles, they need a storage unit to put them in . There are many local car dealers who call them looking for replacement seats. Secondly, they do back-up camera systems. They are the supplier on the East Coast for Safe View Company. Safe View does the installation, but Northeast sells the product. Northeast salesmen pick up the supplies and then go out on the road. They do a few small repairs, but any large repairs required by federal regulation 301 are done by the Rideaway Corporation in Londonderry. They own 15 rentals, which are all customized vans. Three are housed in Connecticut, three in New Jersey, and three or four are housed locally. He said the facility will be used primarily for storage of chairs and benches.

Mr. Horrigan asked about the rental vans. Mr. Brigham said they had rentals in their fleet, and he drove one of them. They are rental vans, and from time to time they are brought in to replace a TV or an arm rest. They are not there to be stored. They are brought in to be checked over before the next rental.

The public hearing was closed.

DECISION OF THE BOARD

Mr. Marchewka made a motion that the variance be granted with two stipulations. They are that any vehicles parked, waiting to be picked up or worked on, shall be parked outside the 100' wetlands buffer and that there be no outside overnight storage of vehicles. Mr. Witham seconded the motion.

Mr. Marchewka said he did not believe the requested variance would be contrary to public interest. The issue is the single family zone across the street, which is well buffered by wetlands and a cemetery. Given the fact that people will visit the cemetery, the Board wants to make certain there is no unsightly building site here. The stipulations have addressed that issue. The work is being done inside, not outside. It is not a typical automotive shop. There are no fumes, noise, or pollutants being emitted. The zoning restrictions that apply to this specific property appear to be reasonable use of that property. This is reasonable use of the industrial zone and is consistent with other uses in the zone and that property. The setback should not be a specific restriction on property in this situation. There is no injury to the private or public rights of others. The operation is being done within the confines of the building. He believes the request is consistent with the spirit of the ordinance. Substantial justice is done in granting the variance in that the owner of the building is being allowed to house this type of industrial use. Almost all the properties surrounding it are industrial in nature. With the stipulations in place, there should be no impact on the cemetery or any of the single-family land across the street. He said for these reasons the variance should be granted.

Mr. Witham said he agreed with Mr. Marchewka. He said the article was well founded when designed, but it was not designed for this situation. This proposal is a very reasonable use of this property and would not be violating the spirit of intent of the ordinance in any way. This property is within 500 feet of a residential district, which by and large is not being used as a residential area.

As a result of this consideration, the Board voted unanimously to grant the request as advertised and presented with the following two stipulations:

- 1) That any vehicles waiting to be serviced and waiting for pick-up be at least 100' from the adjoining wetlands.
- 2) That no overnight parking of vehicles be allowed on the property.

