

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

**7:30 P.M.**

**JULY 20, 2004**

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

**MEMBERS EXCUSED:** n/a

**ALSO PRESENT:** Lucy Tillman, Planner

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**I. APPROVAL OF MINUTES**

The following minutes were accepted by the Board of Adjustment as presented:

Meeting of March 23, 2004  
Meeting of April 27, 2004  
Excerpt from 806 U.S. Route One By-Pass

The Meeting minutes of May 18, 2004, were accepted as corrected.

**I. OLD BUSINESS**

A) Request for Rehearing for **Vincent M. Yosua, owner**, for property located at **30 Spinney Road**. Said property is shown on Assessor Plan 171 as Lot 2 within the Single Residence B.

Prior to the introduction of a motion, Mr. MacCallum commented at length in support of the above request.

Mr. Parrott made a motion that the Request for Rehearing be granted; and Mr. Jousse seconded the motion.

**DECISION OF THE BOARD**

Mr. Parrott felt that the Request for Rehearing should be granted given the adjusted measurement which placed pool 4' further from the property line than originally thought.

Mr. Jousse stated that no procedural error in the Board's application of the law had occurred; however, the information regarding the adjustment in the property line had not been available at the time of the hearing. Mr. Jousse was in favor of granting the Request for Rehearing.

The Board voted unanimously to grant the Request for Rehearing and stated that it would appear on the August Board of Adjustment Agenda.

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B) Request for Rehearing by Anthony S. Hartnett, Esq., for property located at **806 U.S. Route One By-Pass**. Said property is shown on Assessor Plan 161 as Lot 43 within the Business District.

Mr. Jousse made a motion to deny the Request for Rehearing and Mr. Holloway seconded the motion for discussion.

**DECISION OF THE BOARD**

Mr. Jousse felt that there were no grounds for granting a rehearing since there had been no procedural error nor had any new evidence been presented that was not available at the time of the hearing.

Mr. Witham raised the question of the five parking spaces that overlap the property line. He was not clear as to whether they had been included in the total number of available parking spaces at the time of the original hearing. It was determined that the parking spaces did appear on the original plan and were counted as part of the existing parking plan.

Mr. Witham could not support the request to deny the rehearing. He felt that a parking problem did exist; and, since the five overlapping parking spaces were being used as overflow for both businesses, and the relationship between the two property owners seems to have been severed, he felt that a rehearing should be granted.

Mr. Horrigan could not support the request to deny the rehearing based on the fact that the information that the five parking spots were non-conforming was not presented to the Board at the time of the hearing.

Chairman LeBlanc could not support the motion to deny the rehearing as he felt that he had voted in error. He also mentioned the impact of the hour at which this deliberation took place (approximately midnight).

The motion to deny failed with a vote of 2 to 5.

Mr. Witham made a motion to grant the request as presented. The motion was seconded by Vice-chair Horrigan.

Mr. Witham referred to his previous comments in support of granting the rehearing. Mr. Horrigan stated that he was in agreement with Mr. Witham.

The Board voted to grant the Request for Rehearing with a vote of 5 to 2; and the motion will be heard at the August meeting.

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1) Petition of **Portal Realty Partnership, d/b/a Portsmouth Dental Studios, owner**, for property located at **303 Islington Street** wherein a Variance from Article IX, Section 10-908 Table 14 is requested to allow a 38" x 42" projecting sign for a grandfathered professional office in a residential district. Said property is shown on Assessor Plan 144 as Lot 11 and lies within the Apartment district. Case # 7-1

**SPEAKING IN FAVOR OF THE PETITION**

Dr. Francois Lamothe spoke on behalf of his petition. He stated that he had purchased the property in January 2004. He stated that there had been a dental practice in this location for approximately 31 years, and that he was seeking a Variance to replace the old sign.

Mr. MacCallum clarified with Dr. Lamothe that the requested sign was larger than the original sign. Dr. Lamothe responded that the reason for the larger sign was to allow the addition of another doctor's name to the sign.

Lucy Tillman clarified that the size of the sign would be based on the linear foot of frontage of the building, up to a size of 200 sq. ft. Additional discussion regarding signage followed this clarification.

Dr. Lamothe stated that he would be happy to design the sign to comply with the requirements of the Ordinance.

Ms. Tillman pointed out that the Board could grant less relief than was requested.

**DECISION OF THE BOARD**

Mr. Parrott made a motion to deny the request; and, it was seconded by Mr. Jousse.

Mr. Parrott stated that signs are not allowed in the Residential District. He stated that this sign has been there for a long time, so it has been grand-fathered. Due to these reasons, Mr. Parrott felt that the sign should stay the same size. He felt that the sign was clearly adequate, having done a good job for the same type of business for 31 years. He stated that a 50% increase in the size of the sign was not warranted.

Mr. Parrott felt that the sign did not meet the requirements of an area variance per Boccia, as it has been the same use successfully for over 30 years. Secondly, he felt that the applicant could achieve the same benefit by continuing the use of the existing sign and simply changing the face of it.

**DECISION OF THE BOARD**

Mr. Parrott stated that he wished to deny the petition and continue the use of the sign as it exists. Chairman LeBlanc stated that they were unable to do that, so Mr. Parrott withdrew his motion to deny and made a motion to grant a sign of the same dimensions as the existing sign, 38" x 30". This motion was seconded by Mr. Jousse.

Mr. Parrott referred to his previous comments to explain his motion to grant. Mr. Jousse had nothing to add.

Vice-chairman Horrigan added that the requested sign was roughly the same dimensions as several other signs in the neighborhood and thus would be consistent with the signage already present.

Chairman LeBlanc called for the vote to grant the request for a 30"x 38" sign. The Board voted unanimously to grant the request.

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2) **Petition of Bluestone Properties of Rye LLC, owner, Justin Rosberg and Jason Parent d/b/a Meat House LLC, applicants**, for property located at **2222 Lafayette Road** wherein a Variance from Article III, Section 10-304(A) is requested to allow an 8' x 10' walk in cooler with a 13' rear yard where 50' is the minimum required. Said property is shown on Assessor Plan 267 as Lot 2 and lies within the General Business district. Case # 7-2

**SPEAKING IN FAVOR OF THE PETITION**

Mr. Michael Labrie, owner of the above property, stated that the property had come before the Board several years ago and had been approved for four variances dealing with setbacks; and the property had housed three successful businesses. He stated that he represented Justin Rosberg and Jason Parent of Meat House, LLC, who were proposing to add a deck and an 8' x 10' walk-in cooler to accommodate the storage of product for their growing business.

He felt that allowing the Meat House to expand would be in the public interest, as they would be adding 4 employees to their present 12 employee base. He felt that special conditions exist in the dimension of the lot; and denial of the variance would restrict the growth of the applicant's business. He added that an area variance was needed, due to the narrow lot.

Mr. Labrie stated that there was no location that would be suitable for the walk-in cooler, either inside or outside; therefore, he could see no other method whereby the benefit sought could be achieved by the applicant other than by granting the variance. He added that deliveries were currently made 7 days a week and granting the variance to allow the cooler would decrease the frequency of deliveries.

Mr. Labrie felt that granting the variance would be consistent with the spirit of the ordinance as it would not negatively impact other properties and it would foster economic growth in the City. He felt that substantial justice would be done as it would allow a well-run business to succeed. Since the property is well screened in the rear, he felt the proposed variance would not diminish any property values.

He stated that the cooler would be accessed from the interior of the building only and its height would be 7 to 7.5 feet on top of a 14" deck, which would bring it level to the interior of the building. Mr. Labrie also added that there was ample power to accommodate the addition of the cooler and there would be no added generator or equipment that would make noise. Mr. Rosberg said that the addition of the cooler would result in fewer deliveries on a weekly basis.

## **DECISION OF THE BOARD**

Mr. Marchewka asked Lucy Tillman if a stipulation could be attached to the decision stating that the proposed cooler not become part of the footprint of the building.

Ms. Tillman stated that it had been advertised as an 8'x10' walk-in cooler; and could be stipulated that it remain a walk-in cooler.

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

Mr. Marchewka seconded the motion with the stipulation that the area of the walk-in cooler cannot be considered as part of the footprint of the building.

Mr. Horrigan felt that the public interest would benefit from the expansion of a successful local business. He felt that expansion could not occur within the building; and, the added storage space is necessary.

He stated that special conditions of the property are the long, narrow shape of the lot, with limited setback room due to highway frontage requirements. He felt that they had a unique property that could not expand in the front and had little space to maneuver in the rear. Mr. Horrigan felt that the petitioners could not come up with another reasonable method to achieve the benefit sought since they cannot develop this cooler within the building.

Mr. Horrigan felt that the variance was consistent with the spirit of the ordinance, allowing the business to progress by not restricting storage space. He saw no issue of substantial justice due to the fact that the immediate abutters are at some distance and screened by heavy vegetation. Mr. Horrigan felt there would be no diminution of this or abutting properties, due to the fact that the proposed cooler is not clearly visible on this heavily vegetated lot; nor, would there be any added noise as a result of the way this cooler would be constructed.

Mr. Marchewka agreed with Vice-chair Horrigan. He added that this request was more for storage area and has the potential to reduce deliveries.

Mr. Witham could not support the motion to grant. He felt that granting the variance would be contrary to the public interest due to the location of the property on a narrow strip of land, along a curve on a heavily trafficked roadway. He expressed concern regarding the over-intensification of the property, given potential expansion and additional employees requiring more parking.

Mr. Jousse agreed with Mr. Witham. He stated that no hardship had been demonstrated and the petitioner had stated that the business was doing well at the present time. He felt that there was no indication of how much the deliveries would be reduced if the cooler were added. Mr. Jousse added that this property had already been granted much relief and there was no hardship demonstrated as to why the request should be granted at this time.

Chairman LeBlanc called for the vote to grant as advertised and presented with the stipulation that the 8' x 10' area not be considered as part of the footprint of the building.

The motion to grant failed by a vote of 3 to 4 and the request was denied.

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3) Petition of **Brewster Street Property, LLC, owner**, for property located at **98 Brewster Street** wherein a Variance from Article III, Section 10-303(A) is requested to allow the relocation of a previously approved 11'3" x 23' attached garage with a 2'11" left side yard where 10' is the minimum required. Said property is shown on Assessor Plan 138 as Lot 56 and lies within the Mixed Residential Business district. Case # 7-3

**SPEAKING IN FAVOR OF THE PETITION**

Mr. Stephen Bailey, Manager of 98 Brewster Street Properties, LLC, was requesting a variance to shift the garage toward the back of the building to allow for an additional car to park off the street. He stated that he was not seeking to increase the setback of 2' from the previous application.

Mr. Bailey noted that the plan shows a setback of 2.11 feet; not 2'11" as advertised.

Chairman LeBlanc noted a problem since a 2'11" left side yard had been advertised and the petitioner was actually seeking a 2.11' left side yard.

Lucy Tillman indisated an error in transcribing the numbers and explained that the Board grants as advertised and presented; and the garage was presented in a certain location the last time. The location is changing slightly on the lot.

There was further discussion regarding the discrepancy; however, Chairman LeBlanc stated that the request could not be granted due to the fact that it was advertised incorrectly.

**SPEAKING TO THE PETITION**

Ms. Mary Faux of 82 Brewster Street, stated that she has a ROW across the subject property that is 7.5'. She believed that Mr. Bailey intended to sell, and her concern was that this petition not affect her ability to use the ROW.

**DECISION OF THE BOARD**

Mr. Marchewka made a motion to deny the application.

Chairman LeBlanc said that he had difficulty accepting the motion because the advertisement read 2'11" and it is actually 2.11'. He suggested that the petition be tabled and re-advertised for August.

After much discussion, Mr. Witham made a motion to table the petition and re-advertise for the August Board of Adjustment meeting; and, the Board voted unanimously to table to August.

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4) Petition of **Keith and Stephanie Colado, owners**, for property located at **71 Prospect Street** wherein a Special Exception as allowed in Article II, Section 10-206(5) is requested to allow the conversion of a single family dwelling into a two family dwelling on street that the ROW is less than 40' in width. Said property is shown on Assessor Plan 142 as Lot 30 and lies within the General Residence A district. Case # 7-4

**SPEAKING IN FAVOR OF THE PETITION**

*Mr. Jousse stepped down for the hearing of this petition; and, Mr. Berg sat in.*

Ms. Stephanie Colado presented her request to convert her single-family dwelling into a two-family dwelling. She stated that there was plenty of parking and the house was located behind an old bakery and not visible from the street. She stated that there would be little increase in traffic or congestion as a result of granting the requested variance. She outlined the many multi-family dwellings that surround her property. Ms. Colado stated that the traffic on her street was very minimal.

**SPEAKING TO THE PETITION**

Mr. Joseph Almeida of 37 Prospect, stated that the Board had previously denied requests for variances for this neighborhood based on safety and parking issues. He stated that if the Board could say that the granting of this variance would not be the cause of any undue safety or parking issues, that he would be in support of the petition.

**DECISION OF THE BOARD**

Mr. Berg made a motion to grant the Special Exception as presented and advertised; and, Mr. Horrigan seconded the motion.

Mr. Berg stated that the ROW is very narrow; but off-street parking addresses the concern of parking. Mr. Berg stated that there would be no hazard to public or adjacent property, no detriment to property values in the vicinity, no creation of traffic or congestion, no excessive demands on municipal services or increase in storm water runoff to adjacent properties as a result of granting this request. He stated that with the proposed removal of one bedroom, there could exist fewer cars and minimized parking demand.

Vice-chair Horrigan felt that there was clearly room for four parking spaces on the lot; so, the potential addition of two extra cars would not result in undue traffic or congestion to the property or the area.

Chairman LeBlanc called for the vote to grant as advertised and presented; and, the Board voted unanimously to approve the petition.

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5) Petition of **Mark C. and Holly Lowe, owners**, for property located at **350 Broad Street** wherein a Variance from Article IV, Section 10-402(B) is requested to allow a 14' x 30' two story garage with a 6' left side yard and a 6' rear yard where 12.75' is the minimum required in each instance. Said property is shown on Assessor Plan 221 as Lot 69 and lies within the General Residence A district. Case # 7-5

**SPEAKING IN FAVOR OF THE PETITION**

Ms. Holly Lowe Adamy explained her request for an attached garage. She stated the position of their driveway, and stated that they wanted to add a one-car garage with storage. She stated that they intended to maintain the same roofline and look as the front of the house.

Chairman LeBlanc clarified that if the garage were located further toward the right property line, the petitioner would not be able to get in to the garage.

Mr. Witham commented on the advertisement as compared to the actual drawings presented to the Board. There was a brief discussion amongst the Board members on this point.

**DECISION OF THE BOARD**

Mr. Witham made a motion to deny, and it was second by Mr. Marchewka.

Mr. Witham was concerned about discrepancies in the drawings versus the numbers that had been presented. He felt that if the variance were granted as demonstrated by the drawing, the petitioner would be allowed to go forth with a roofline of approximately 25'. He felt that this height would be too tall to be located so close to the property line.

Mr. Marchewka agreed with Mr. Witham and added that it was a confusing application, and the requested relief was too great, given the proposed size of the structure.

Chairman LeBlanc called for the vote to deny the petition. The Board voted unanimously to deny the petition.

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6) Petition of **Tamara C. Arthur, owner**, for property located at **593 Kearsarge Way** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) are requested to allow a 10' x 16' one story sunroom addition with: a) a 1'6" right side yard where 10' is the minimum required, b) an 11'6" rear yard where 25' is the minimum required; and, c) 32.8% building coverage where 30% is the maximum allowed. Said property is shown on Assessor Plan 212 as Lot 29 and lies within the General Residence B district. Case # 7-6

**SPEAKING IN FAVOR OF THE PETITION**

Mr. Lee Stephens of Clearview Sunroom, represented Ms. Arthur. He presented a petition signed by immediate abutters who were in support of the proposed addition. He stated that Ms. Arthur wanted to add a sunroom to create more space for recreation. He felt that the property was unique due to the size of the property and the way it was subdivided. Mr. Stephens felt that adding the sunroom would improve the property and would have no negative impact on the surrounding properties or the community.

Mr. Stephens stated that the existing back door would open into the sunroom and the present deck would be torn down. He stated that the sunroom would be built on piers.

Mr. Horrigan had some difficulty interpreting the petitioner's drawings, which were somewhat haphazardly executed.

Mr. Witham asked if the sunroom could be located on the opposite side where it would be less obtrusive. He felt that it would be cheaper to move the bulkhead rather than moving all the electrical.

Both Chairman LeBlanc and Mr. Marchewka asked for interpretation of the drawings. Mr. Stephens described further the construction of the base of the sunroom.

**DECISION OF THE BOARD**

Mr. Witham made a motion to deny the request as advertised and presented. Mr. Parrott seconded the motion.

Mr. Witham stated that Atlantic Heights was a very unique development. He felt that this type of addition would change the character of the area and would diminish the value of the property. He felt that the proposed 16' wall would impact the neighbor's enjoyment of the yard as well as impacting the flow of air and light.

Mr. Witham felt that the benefit of adding the structure could be achieved by putting the structure in another location and not crowding the abutter with an 18" setback. Mr. Witham was also concerned that if the variance were granted for the first floor addition, the owner would be free to construct a second story without a variance.

Mr. Parrott agreed with Mr. Witham. He felt that the sunroom would be out of character. He felt that the backyard was small as exists and the addition would put it over the allowable building coverage for the lot. He agreed that the proposed 16' wall would reduce light and airflow. He felt that a 1'6" side yard would be nearly non-existent; and that the structure was too large and inappropriate for the building.

Mr. Jousse could not support the motion to deny. He stated that all the dwelling units in this part of the city are very small and one almost needs a variance to go outside and change your mind. He did not feel that the request for variance was too great for the area, since they are requesting only 2.8% relief on lot coverage. He felt that this was a request that could be granted.

Mr. Marchewka stated the uniqueness of Atlantic Heights, and added that the Board had been supportive of expansions of some of the buildings in that area. He felt that because the lots are small and close, particular care has to be taken when entering into an expansion, because it affects the entire neighborhood and the values of the properties. He stated that there had not been a lot of thought or care taken with the application. Mr. Marchewka stated that the Board was presented with a quick pencil sketch of something that could not be understood. He felt that the proposed addition does not fit in with the existing brick buildings of Atlantic Heights and could end up being an eyesore, diminishing the value of surrounding properties. Mr. Marchewka could not support the request.

Mr. Witham felt that granting the variance would be contrary to the public interest. He referred to the fact that Atlantic Heights is currently raising funds to become part of the National Historic Register. He felt that achieving that status would be related to the uniqueness of the area and the fact that it has been kept in its original state. He did not feel that it was in the public interest to have sunrooms attached.

Chairman LeBlanc reiterated that the right side yard would be only 1'6". He stated that there is no unique character about the lot that would require us to grant a variance to this particular dwelling. He added that to put a structure of this size would diminish the light and air and change the feeling of the neighborhood. He felt that the request could not be granted because the relief that was being sought was too great.

Chairman LeBlanc called for the vote to deny the request. The Board voted to deny the petition with a vote of 6-1. Mr. Jousse voted in opposition to the vote to deny.

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7) Petition of **Joli Ann Foucher, owner**, for property located at **566 Greenland Road** wherein a Variance from Article III, Section 10-302 (A) is requested to allow a subdivision creating two lots with each lot having 90' of continuous street frontage where 100' is the minimum required. Said property is shown on Assessor Plan 258 as Lot 1 and lies within the Single Residence B district. Case # 7-7

*Mr. Jousse was excused and Mr. Berg sat in for the hearing of this petition.*



## **SPEAKING IN FAVOR OF THE PETITION**

Attorney Bernard Pelech spoke on behalf of the applicant, Joli Ann Foucher. He stated that the lot proposed for subdivision is the last lot on Greenland Road before arriving at an open field of 150 acres of undeveloped land.

Attorney Pelech stated that the purpose of the subdivision of the lot is to allow the construction of a second dwelling unit on the second lot for Ms. Foucher's father. He stated that each of the lots would be five times the minimum lot size required but would be 10' short of the required 100' of frontage.

Mr. Pelech stated that he had written a letter to Mary Griffin to try and do a land swap or to acquire 20' of frontage from the Griffin Family Corporation. He stated that Mrs. Griffin could not agree to sell the frontage; however, she had no problem with a variance being granted to allow the two lots to be created. Mr. Pelech submitted letters from abutters expressing support of the request.

Attorney Pelech stated that there is no way the applicant can make 180' of frontage into 200' of frontage. Other special conditions cited by Attorney Pelech were the location of the property in proximity to an Industrial Zone; the long narrow shape of the lots; and, the fact that they are 5 times larger than what would be required for a single family dwelling.

Attorney Pelech felt that the benefit sought by the applicant could not be achieved by any other reasonably feasible method. He stated that the applicant had been unable to acquire the required frontage from either of the abutters, so there is no other alternative.

Attorney Pelech did not feel there would be any diminution of value of surrounding properties as a result of granting this variance as many the surrounding properties are set back off the road. He felt that substantial justice would be done in granting the variance as the lot is unique; and, denying the variance would present a hardship for the owner. He said that the lots are large and this proposal would not be out of character for the neighborhood.

Mr. Pelech submitted a letter signed by Peter Downs, Sean Finan and Joseph Zammit, in support of the requested variance.

## **DECISION OF THE BOARD**

Mr. Marchewka made a motion that the request be granted as advertised and presented. The motion was seconded by Mr. Berg.

Mr. Marchewka stated that the lot was large, long and narrow with a substantial amount of acreage. He did not believe granting the variance would be contrary to the public interest. The property is abutted by a couple single-family dwellings, one of which is on 3.5 acres of land; therefore, he felt that this would not impact the public in any negative way.

He stated that special conditions exist in the configuration of the lot, that the literal enforcement of the Ordinance would result in unnecessary hardship. He felt that they have exhausted all possibilities of obtaining the necessary amount of frontage from abutters on either side because of circumstances regarding access to these two lots; therefore, the only method for them to achieve the benefit would be through a variance.

He stated that granting the variance would be consistent with the spirit of the ordinance as the home would occupy a lot that is five times the required amount. He felt that substantial justice would be done in granting reasonable use of the land to the landowner. He did not think that the value of

surrounding properties would diminish. Mr. Marchewka agreed with the idea of utilizing the same access to minimize curb cuts on Greenland Road. He added that the applicant has worked very closely with the City and abutters to come up with a solution that is acceptable to everyone.

Mr. Berg felt that the applicant was not requesting a lot of relief. He felt the loss of 10' of frontage is offset by the 800' of area to the rear of the lot. He felt it was a reasonable request and he was in agreement with Mr. Marchewka on all points.

Vice-Chair Horrigan recommended that a stipulation be added stating that there be one common driveway for both lots. The recommendation was acceptable to both the maker and the second of the motion to grant.

Chairman LeBlanc called for the stipulation to grant with the stipulation that there be one common driveway for both lots.

The Board voted unanimously to grant the request.

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**I. ADJOURNMENT**

A motion was made and seconded and the meeting was adjourned at 10:15 p.m.

Respectfully submitted,

Judith A. Claveau  
Secretary, Board of Adjustment

These Minutes were approved as presented at the Board of Adjustment Meeting on February 15, 2005.

Mary E. Koepenick  
Secretary