

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

7:00 P.M.

October 19, 2004

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

MEMBERS EXCUSED:

ALSO PRESENT: Lucy Tillman, Planner

I. OLD BUSINESS

- A.) Petition of **Lawrence and Ruth Gray, owners**, for property located at **80 Curriers Cove** wherein a Variance from Article III, Section 10-301(7)(a) is requested for retroactive approvals for the following where the minimum setback from salt water marsh wetlands / mean high water line is 100'. Item 1) Approval is sought for an existing second story deck with dimensions of 10' x 14' which differs from the plan submitted to the Board showing the second floor deck having dimensions of 8' x 14'. The second floor deck constructed by the Applicant's contractor has a curved front which results in the deck being 10' x 14', the maximum extent of the "bump out". The plan submitted shows this Item as being 74' from salt water marsh wetlands / mean high water line. Item 3) In June 2002 a building permit was issued to convert a screened porch and deck to living space. The screen porch converted to living space had a cropped corner to accommodate an existing tree. Subsequently the tree was removed and the cropped corner was extended and enclosed. The Application seeks approval for the enclosure of the corner. The plan submitted shows this Item as being 81' from salt water marsh wetlands / mean high water line. Item 4) In 2003 the Applicant received approvals to construct an 8' x 14' deck with a 4' x 4' platform and steps to the ground. Due to the geographical features on the ground, the steps and platform were configured in a manner different from plans submitted. The Applicant seeks approval of the platform and steps as they are presently configured in this Application. The plan submitted shows this Item as being 67' from salt water marsh wetlands / mean high water line. Item 5) During the renovation of the Applicants home, a new bow window was installed in the kitchen. The bow window makes no contact with the ground. The Applicants seek approval of this bow window. The plan submitted shows this Item as being 60' from salt water marsh wetlands / mean high water line. Said property is shown on Assessor Plan 204 as Lot 14 and lies within the Single Residence B district. Case # 9-2
(This petition was tabled at the September meeting)

Ms. Tillman informed the Chair that the parties were unable to attend the meeting and therefore, there was no one to speak to the petition.

Chairman LeBlanc asked the Board for a motion to table the petition indefinitely.

Mr. Holloway made the motion to table the petition indefinitely.

Mr. Witham wondered if there was anyone in the audience that could speak to the petition.

Chairman LeBlanc answered no, that they had that problem last month.

Mr. Horrigan seconded.

Chairman LeBlanc called for the vote to table the petition indefinitely and the motion passed via a unanimous vote of 7-0.

- B.) Petition of **Deborah C. and Harry D. Hobbs owners**, for property located at **489 Sagamore Avenue** wherein a Variance from Article III, Section 10-301(A)(2) is requested to allow a 24' x 24' one story with basement freestanding second dwelling on the lot in a district where all dwelling units are required to be in one building. Said property is shown on Assessor Plan 222 as Lot 25 and lies within the General Residence A district. Case # 9-9
(This petition was tabled at the September meeting)

Let the record reflect that Mr. Marchewka recused himself.

Mr. Holloway made a motion to take the petition off the table and Mr. Witham seconded.

Chairman LeBlanc called for the vote to take the petition off the table and the motion passed via a unanimous vote.

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernard Pelech spoke on behalf of the owners and the petition. He reiterated that they were requesting a 24' x 24' one story with a basement, free standing structure as a second dwelling on the lot. He stated that the property is a large lot consisting of 1.35 acres within a zone that requires the minimum lot size of 7500 sq. feet, which said lot is eight times the required size. The requested second dwelling would be on the rear of the property approximately 200 feet off of Sagamore Avenue. He noted to the Board that the surrounding uses are residential in nature eventhough the property abuts Sagamore Park. The requested dwelling would replace the existing 20' x 20' dwelling. He stated that the ordinance has setback requirements, height requirements, parking requirements, building requirements and open space requirements that the proposed would need to meet. He explained how the property satisfied the *Simplex* criteria set forth for obtaining a use variance. He pointed out that the Board had granted the relief requested prior but the approval period had lapsed. He further stated that approval was granted over two years ago and the Board then found there to be hardship so he felt that the Board today should find the same and therefore, grant their request. Additionally, he noted that at the previous meeting there was some testimony raised by the abutters about the height of the structure causing diminution in value of the surrounding properties. Attorney Pelech stated that he had spoken with a couple of the abutters and presented letters from the abutters voicing their support for the requested relief sought. He urged the Board to grant the same.

Chairman LeBlanc asked if there were any questions from the Board.

Mr. Berg asked how many bedrooms were in the existing cottage.

Attorney Pelech answered one.

Chairman LeBlanc asked about the proposed structure and if it would be one story height as the existing structure stands currently.

Attorney Pelech answered yes.

Chairman LeBlanc asked if it would just be wider.

Attorney Pelech answered yes.

Chairman LeBlanc asked if there was anyone in the public that wished to speak to, for or against the petition.

Seeing no one rise, the Chairman declared the public hearing closed.

DECISION OF THE BOARD

Mr. Berg moved to grant the petition as presented and advertised and Mr. Witham seconded.

Mr. Berg explained that he preferred having two structures than one large structure. He felt that the existing structure was dilapidated and needed to be replaced and it would be an improvement to the property. He further stated that the applicant did satisfy the *Simplex* standard and that he would vote for the granting of the variance.

Mr. Witham stated that since the variance was granted previously and just expired, he did not see why the variance should be denied.

Mr. Horrigan would vote for the petition.

Mr. Witham asked if the current request was for a one-story and whether someone could construct a two-story later down the road.

Ms. Tillman answered that they would have to come back for that request.

Mr. MacCallum stated that he would be supporting the petition.

Chairman LeBlanc asked if there was any further comment by the Board.

Hearing none, the Chairman called for the vote on the motion to grant as presented and advertised and the motion passed via a unanimous vote of 7-0.

- C.) Petition of **150 Greenleaf Avenue Realty Trust, James G. Boyle Trustee, owner**, for property located at **150 Greenleaf Avenue** wherein an Appeal from an Administrative Decision is requested concerning the determination that parking of vehicles "For Sale" is

“outdoor storage” as defined by Article I. **(This petition was tabled at the September meeting)**

Notwithstanding the above, if the Administrative Appeal is denied, a Variance from Article II, Section 10-208(35) is requested to allow the outdoor storage of vehicles upon existing pavement within 200’ of a residential district where a 200’ buffer to a residential district is required. Said property is shown on Assessor Plan 243 as Lot 67 and lies within the General Business district. Case # 9-10

It was moved, seconded and passed that the petition be taken off the table.

Chairman LeBlanc asked for anyone speaking in support of the petition.

SPEAKING IN SUPPORT OF THE PETITION

Attorney Bernard W. Pelech spoke in favor of the petition on behalf of the applicant, 150 Greenleaf Avenue Realty Trust. Like the previous application, it had been tabled twice before. It was also continued at the September 21st meeting because it was past ten o’clock. He stated that they had come back the following week but without a full Board, they requested that it be tabled and, with much discussion, it was. The first part of the application was the Administrative Appeal. He stated that as it was discussed at the previous hearing, the basis of the Administrative Appeal was that the applicant felt that the language of Section 10-208(35), which dealt with motor vehicle sales, was unclear and/or ambiguous. Section 10-208(35) Table 4 states “Motor vehicles sales, renting or leasing, including accessory repair services, for vehicles not requiring tractor registration plates and weighing less than 32,000 pounds, provided, outdoor storage areas are located at least forty feet from the street right-of-way and two hundred feet from any Residential or Mixed Residential district; and, all accessory uses are located within a building.” He emphasized the phrase “outdoor storage areas” and stated that was why they were before the Board. He stated in order for him to determine what outdoor storage meant, he looked up outdoor storage which happened to be defined in Section 10-102 “storage of materials on a lot without benefit of a structure with four walls and a roof to protect the materials from the elements. This definition shall not be deemed to include the outside storage of junk (regulated separately) or as a temporary structure.”

So, by reading the definition of outdoor storage, the issue was vehicles for sale “materials” and, he asked what were materials? He used Webster’s New World Dictionary’s definition of materials, or material, which defined it as “of matter physical, of the body or bodily needs, important, essential or, as a noun, what a thing is or may be made of, elements or parts, tools needed to make or do something.” He also used the American Heritage Dictionary’s definition which was “tools or apparatus for the performance of a given task; the substance from which something is, or can be, made. Finally, the definition from Webster’s Collegiate Dictionary defined materials as “the substance of which a thing can be made, often a tool need for making something or carrying out a task.”

He stated that nowhere did it say that vehicles could not be stored within 200 feet of a residential district or within forty feet of a street right-of-way, yet the zoning ordinance in many other places said vehicles could not be stored within so many feet. He felt that was the basis of the administrative appeal. He stated that when they were before the Board previously discussing the issue, the content of the variance, there were some differences among the Board members and he felt that reasonable

people can differ on their interpretation of what the ordinance states. He felt that it was a critical question in the case, and believed the ordinance said that vehicles cannot be stored outside within 200 feet. He proclaimed that automobile dealers store their vehicles outside, and they store a few inside but stated that the primary business of automobile dealers is to store their vehicles outside due to the fact that they do not have room to store them indoors.

Mr. Pelech stated that his impression was that outdoor storage areas, as defined by the ordinance, “storage of materials”, was meant to include other things. He proclaimed that outdoor storage was in numerous places in the ordinance. He noted that in the general business district, it states that you can do certain things but there shall be no outdoor storage of materials. He also stated that heating companies can not store pipes outside, that a plumbing supply house cannot store plastic pipe or boiler tanks outside due to the supplies being unsightly. In addition, he noted that retail businesses cannot store their materials outside for the same reason, it is unsightly. Again, he reiterated that it is in the zoning ordinance that there is no outdoor storage.

He stated that those examples were components of other products and that in his mind, as defined by the ordinance, outdoor storage was the storage of materials and that materials do not appear, at least from the definitions he read to the Board, to be motor vehicles. He stated that it was their position that the ordinance did not intend for it to apply to “for sale” vehicles. He stated that the Planning Department or the Code Enforcement Officer had determined that when you visit the dealership or if you bring the car there for repair, or if you are an employee, you can park your car in these locations and the automobile is o.k. in that case. Nevertheless, he stated if the car is for sale or lease, it can not be parked there and, he did not see the difference. Additionally, he noted that if one of the hundreds of students that attend Southern New Hampshire University and park their cars in those spaces, it’s ok, but if the car was for sale by the dealership, it couldn’t be parked in those spaces. Again, he stated that he did not see the connection or the reasoning, nor did he think that the ordinance was clear given the so-called ambiguity or the difference between what Section 10-208(35) states and what Article I states with regard to the definition of outdoor storage. He concluded his remarks with regard to the administrative appeal and stated that they wanted the Board to determine whether or not the term outdoor storage did not apply to “for sale” vehicles.

Chairman LeBlanc asked for questions from the Board and none were posed and asked for anyone else who wished to speak in support of the petition. With no response, he asked for anyone who wished to speak in opposition.

SPEAKING IN OPPOSITION

Attorney Charles A. Griffin on behalf of his wife Judy indicated he wished to speak in opposition to the administrative appeal. He urged to the Board to deny the appeal. He stated that he agreed with the arguments set forth in the Department’s September 21st memorandum and that the Board concluded in its discussion in August that, when all was said and done, the phrase “outdoor storage areas” was specifically incorporated in Article 10-208(35) to mean that Section most definitely was intended to apply to motor vehicles.

He talked about the definition of materials and found in Webster’s Dictionary the following definition, “anything that’s formed of matter and has substance” and submitted that in those particular circumstances, a motor vehicle was most definitely material. In terms of the examples that Attorney Pelech gave, he talked about a plumbing supply company storing its inventory outside and

not being able to do that and other merchants not being able to store their goods outside and Mr. Griffin stated that as an automobile dealer, your inventory or goods are automobiles. He also remarked that a plumbing dealer can not store the pipes outside because that is their inventory or goods, and that as an automobile dealer, they cannot store the inventory outside, which are automobiles.

He noted Mr. Pelech's statement about the difference between someone parking their car there for servicing or parking their car if they're just visiting the dealership, and stated that a car that was in for service or a car that was there for parking was not part of the dealer's inventory or goods and, therefore, the ordinance didn't apply to that situation.

He also noted that previously, there was some discussion about the fact that these items would not need to be protected from the weather and that based on developments in Florida with the hurricanes, automobile dealers there would dispute the fact that automobiles do not need to be protected from the weather. Additionally, he noted that in the wintertime when dealerships remove the snow the morning after a storm it shows that they do need to be protected from the weather.

Mr. Griffin concluded that he believed that there was ample evidence that the administrative decision was correct, that it should be upheld, and he asked the Board to do so.

Chairman LeBlanc asked if there were any questions from the Board and hearing none, he asked if there was anyone else who wished to speak in opposition. He asked those coming up to form a line behind the podium and to speak one at a time.

Philip Geraci of 237 Hillside Drive indicated that he wished to speak in opposition to the Administrative Appeal for Portsmouth Toyota for two reasons. The first reason was the expansion issue. He stated that Portsmouth Toyota would continue to expand if allowed. The second was because the dealership kept systematically violating the setbacks on a regular basis.

Michael Donah of 152 Hillside Drive indicated that he wished to speak in opposition to the administrative appeal. He wanted the Board to review their previous decision very carefully.

Dianne Lavoie of 152 Hillside Drive indicated that she wished to speak in opposition to the Administrative Appeal.

Chairman LeBlanc asked if anyone else would wish to speak to, for or against. Seeing no one rise, the public hearing for the administrative appeal was closed.

DECISION OF THE BOARD

Chairman LeBlanc stated that the Board had an appeal from an administrative decision and asked what was the pleasure of the Board.

Mr. Jousse moved that the Board uphold the administrative decision of the Code Official. Mr. Parrott seconded.

Chairman LeBlanc asked Mr. Jousse to speak to his motion.

Mr. Jousse stated that he did have access to an Encyclopedia Britannica and that their definition of storage was “the means of holding and protecting commodities for later use.” He stated that Webster’s Dictionary defined storage as “the safekeeping of goods in a depository, the price charged while keeping goods in the store house, to place or leave in a location for preservation or later use or disposal, to provide storage room for.” Additionally, he stated that he would be hard pressed to find anyone that would not consider cars placed for sale at a dealership not considered storage. He stated that it was therefore a later use or later disposal by the dealer in one form or another to be transferred to another place or sold to the public. He believed that the Planning Department made the right decision.

Chairman LeBlanc asked Mr. Parrottt to speak to his second.

Mr. Parrottt stated that with respect to the use of materials in the definition previously stated for the meaning of storage, the word storage was used in a very generic sense and it could be used in a myriad of examples. He stated that he reasonably read the definition to mean materials in any stage of manufacture. Secondly, he pointed out that the definition of outdoor storage to include specific defined exceptions mainly for the outside storage of junk and that it does not include an exception for motor vehicles. Further, he pointed out that no one has ever offered an alternative status of the vehicles. He rhetorically stated, “if these vehicles that are for sale are not in storage than what status are they in?” He then went on to state that storage seems to fit the dealership’s category best and he felt that the administrative reasoning was correct.

Chairman LeBlanc asked if there was anyone who wished to comment.

Mr. Witham wanted to comment on Attorney Pelech’s statements based on the ambiguity in the zoning language. He did not see the ambiguity in the language and thought it was very clear. He stated that if there was a question of ambiguity within the zoning ordinance, he refers to what the intent was and when it is written; that there should be a 200 ft. distance between residential homes and dealership whenever there was an area criteria, such as a setback, to him, the intent was a buffer zone. He supported the motion.

Mr. Horrigan stated that any reasonable person that read Section 10-208 (35) read only what would conclude that they were talking about storage for automobiles for sale and that it was very clearly stated. He went on to note that the attorney wanted the Board to go back to the definition due to the ambiguity of the word “materials” in the storage definition. He said that it was clear that the person who wrote the definition tried to use a generic term and that today, it proved that no matter what term would have been used that it would never be clear enough and would always be challenged. He also felt that it was a frivolous challenge and that the zoning language used in the business district could not be any clearer. Finally, he stated that he would not support the petition to overturn the administrative decision.

Chairman LeBlanc stated that the vote on the current motion was to uphold the administrative decision and asked if there were any further comments from the Board.

Chairman LeBlanc asked the Board for all those in favor of upholding the administrative decision; the motion passed with a 7-0 vote.

Chairman LeBlanc then stated notwithstanding the above, if the administrative appeal was denied a variance from Article II, Section 10, 208(35) was requested to allow outdoor storage of vehicles upon the existing pavement within 200 ft. of a residential district where a 200 ft. buffer to a residential district was required. The said property shown on Assessor Plan 243 as Lot 67 and is within the General Business District, case no. 9-10. Chairman LeBlanc asked if anyone wanted to speak to the petition.

SPEAKING IN SUPPORT OF THE PETITION

Attorney Bernie Pelech on behalf of the applicant wanted to go over with the Board the changes on the plan from the previous application. He stated that the Board denied a request for a variance that would have allowed parking within 100 feet of the residential zone. He remarked about the comments from the Board at that meeting and that there were at least four board members that had no problem with the applicant utilizing the existing parking spaces but they didn't want any expansion. As such, he stated that the application had changed and was only seeking to use the existing parking spaces with no expansion on the lot so that the variance could be granted.

He stated that the property had special conditions and that the property was located at the end of the so-called general business zone. He went on to say that the special conditions of the property made it impossible to comply with the applicable setbacks or other restrictions and that an area variance may be what is needed. He also referred to the *Boccia* case. He did not believe that there was any reasonably feasible alternative option. He stated that they did not believe that the current project would be contrary to public interest or the spirit or intent of the ordinance. In addition, he said that given the fact that the property was at least 200 ft. from the far side of the Rte. 1 By-pass it would not be contrary to the spirit or intent of the ordinance. He stated that granting the variance would result in substantial justice being done and that given the comments of the Board from the last meeting, it should result in substantial justice being done. He remarked that denying the variance would result in unnecessary hardship and that the applicant was only seeking to use what is currently out there, the existing parking spaces that are filled everyday. Further, he stated that the surrounding property values would not diminish due to the variance being granted. He said that none of the outside lighting was changed and that test drives had no relation to the granting of the variance. He stated that the application is consistent with the ordinance and that all of the criteria was met as set forth in both the *Boccia* and the *Simplex* cases.

Mr. Pelech stated that it is not a self-created hardship. He said that according to the *Simplex* case, if the landowner purchased land knowing that it was inadequate for a particular purpose, it was not the responsibility of the zoning ordinance but the failure of the purchaser. He mentioned that the Supreme Court stated that a purchase with knowledge was a non-dispositive factor and was a consideration of the hardship test. He remarked that given the fact the Board was receptive at the previous hearing when it rejected the setback, he thought that the current petition was not an unreasonable request. He also noted a letter from New Hampshire Southern University in support of the current petition.

Chairman LeBlanc asked if there were any questions from the Board.

Mr. Jousse recalled when the applicant was in front of the Board for the sign, Southern University would be gone at that time because Mr. Pelech claimed that the applicant could use the square

footage from the existing sign and apply it to the new sign, and asked Mr. Pelech if the lease had been renewed with Southern New Hampshire University.

Mr. Pelech replied that they are currently a tenant at will as they are waiting for the building to be completed at Pease. He also noted that the sign variance was denied in January of 2004 and that the applicant believed Southern New Hampshire University would vacate between July and September and now it would be sometime around the first of the year.

Mr. Jousse stated that he is taking the recommendation for an approval from a tenant with a grain of salt.

Mr. Horrigan asked about the Boccia analysis and had a comment for observation. First, he noted that in the Boccia analysis, there were moments when he wished the State Supreme Court Judges had named it a geometric variance instead of an area variance and that a 200 ft. buffer zone creates a problem, but the benefit sought by the applicant was the outdoor display of cars for sale, around 75 approximately.

Bernie Pelech stated that roughly 55 of the spaces are usable.

Mr. Horrigan asked what would the benefit be. Were there some number of cars that must be displayed in order to have a viable dealership.

Bernie Pelech answered yes and that is where the economic factors came into play.

Mr. Horrigan asked if there was some rough number.

Jim Boyle stated a 60-day worth supply or roughly 240-304 cars.

Bernie Pelech stated that if the variance were granted this evening, then there would be approximately 200 spaces to display vehicles.

Mr. Horrigan stated that would be less than what is desired.

Bernie Pelech noted a few other dealerships in the surrounding area that have far more spaces than what they are requesting.

Mr. Horrigan made the rhetorical comment to Mr. Pelech as to whether they were supposed to accept other dealerships as a model.

Bernie Pelech replied no, but the examples were provided to display economic survival.

Mr. Horrigan made the observation that when he visited his friend on Hillside Drive there were cars on display along the Rte 1 Bypass and they were adorned with many balloons. He stated that if he lived on that street he would not want to look at displays like that and he did not know if it had any bearing on what they were requesting currently was a public interest question.

Bernie Pelech stated that what they were requesting was a matter of distance not whether they can have balloons on them or not, but if the Board wants to make a particular stipulation that none of the cars parked in a particular location can have balloons, that was fine.

Chairman LeBlanc asked Attorney Pelech about the location of the cars to be parked as he drove past the other day and there were cars parked against the building and wondered if that was where they would be displayed.

Bernie Pelech replied that they had moved the vehicles repeatedly due to requests and that it has left the applicant with no parking in front of the building.

Mr. Berg stated that the zoning line was sort of arbitrary as it goes down the highway, which can't be developed anyway, and he wanted to know the true distance between the residential properties that they would be buffering and the line of the paved parking pavement.

Bernie Pelech replied that it would be 200 ft.

Mr. Berg stated that it would be physically impossible for there to be houses in the highway so there would be 200 feet from a residential area, just not 200 feet from a residentially zoned area – meaning the two lanes and the breakdown lane in the highway. He asked Mr. Pelech if that was what the applicant was seeking relief from – (measured from) a portion of the highway, not the actual houses.

Bernie Pelech stated that was correct.

Mr. Marchewka shared a concern with Mr. Horrigan about the display of vehicles. After the last meeting, he noted that he paid a great deal of attention to the site and stated that he would have a hard time with the difference between a parked car and almost a sign. He noted that some of the cars that were parked there had balloons attached to them or the hood was open with a sign containing big letters. He stated that it struck him to be very intrusive and he realized why zoning requires car dealerships to be so many feet away from residential districts. He wanted to know how the vehicles were going to be displayed, whether they would be just cars parked in a lot or cars parked adorned with signs and/or balloons.

Jim Boyle stated that when they moved into the building where Southern New Hampshire University was and they were forced to use unconventional marketing means in order to get people to notice them. He noted that most people think it is still a school and that upon the completion of this project, the dealership would look more like a dealership and it would result in the removal of any sense of confusion as to whether it is still a school or a dealership.

He also stated that due to the Board's decision with the sign, they had to have a special sign created and made reference to the cost. He stated that the normal signage for a Toyota dealership would cost around \$13,000.00 and because of the Board's decision, they had to pay \$28,000.00 and it took 4 months to make. He said that they were just trying to generate some revenue in order to pay for everything and that was why they have resorted to such unconventional marketing ideas.

Mr. Boyle reiterated that he did not agree with the Board's views and suggested that instead of reading the book, to look across the street to the Dodge dealership and the Board would see the cars parked up against the pavement.

Chairman LeBlanc asked if anyone wished to speak in favor of the petition. Chairman LeBlanc asked if anyone wished to speak in opposition of the petition and asked the people to form a line behind the podium.

SPEAKING IN OPPOSITION OF THE PETITION

Charles Brindamour of 433 Greenleaf Avenue was speaking in opposition of the expansion of the dealership. He stated that it was his understanding that the strategy of Portsmouth Toyota in the beginning was to initially agree to the setbacks in the area knowing full well that they could eventually receive variances in order to make an ever-expanding presence on the property. He stated that the key phrase in the petition that Portsmouth Toyota was requesting was ever-expanding, meaning that they want to expand the number of cars on their lot, they want to increase the lighting, etc. He noted that they were not obeying the ordinance and that it was a unique area but that they need to abide by the ordinance and keep the test drivers off Greenleaf Avenue. He mentioned that the dealership abuts lots of people, Wamasut Place, a recreation center for children, mentally ill people, senior citizens, in addition to many residents/tax payers that are all affected by this. He urged the community to embrace the fact that this was the tip of the iceberg and to put a stop to it now before it got any worse. He noted that the negative impact would be great and that since the last request for a variance, Portsmouth Toyota has violated the car setbacks on the property on a regular basis even though they had been warned by the Board repeatedly. He stated that it is preventable, that human beings live on Greenleaf Avenue and he thought Portsmouth Toyota would not be a good neighbor due to their repeated violations of the ordinance and that the Board should not allow them to expand their dealership.

Michael Donah of 152 Hillside Drive spoke in opposition of the expansion of the dealership. He presented photos taken the day before the meeting and a petition of all of the residents that signed it in opposition to the current petition before the Board.

Karen Ring of 236 Hillside Drive spoke in opposition of the expansion of the dealership. She noted that Portsmouth Toyota has failed to act in good faith in regards to their previous requests for variances. She stated that though each previous request has been denied, they have shown a lack of respect for the community and the people in it doing whatever they want regardless of the fact that none of their requests have been approved. She said that they continue to park the vehicles wherever they choose and that based on their actions, it has given the people in the community every reason to believe that they would continue to disregard the decisions of the Board and would do whatever is in their best interests even if that means breaking the rules. In addition, she noted that Portsmouth Toyota was well aware of the certain restrictions that came with the property before they purchased it and she was concerned about their home values diminishing due to Portsmouth Toyota encroaching their neighborhood and increasing traffic due to their presence. She concluded that no matter what, the community and neighborhood that she lives in would always speak against any request made by Portsmouth Toyota in the future.

Christopher Ring, husband to the previous speaker, Karen Ring of 236 Hillside Drive, spoke in opposition to the petition of Portsmouth Toyota. He presented from many concerned abutters to the property in question letters in opposition to the current petition of Portsmouth Toyota and photos showing continuous disregard of the Board's decision. He asked Mr. Boyle from Portsmouth Toyota about the comment he made earlier about their need for 240 vehicles to be on

display on their lot and he asked him if that need superceded their need for healthy community. He pointed out that the same techniques for advertising used by Portsmouth Toyota is also being used by other surrounding dealerships and that it is the norm. He asked the Board to completely disregard any answers that the applicant has supplied as they are false representations of what was actually happening and that their actions have not reflected any efforts on their part to abide by the Board's decisions and requests.

Lynwood Arsenault of 233 Hillside Drive spoke in opposition to the petition of Portsmouth Toyota. He felt that there would be a significant increase in car owners and that it would adversely affect the area as well as the environment.

Donald Pexton of 225 Hillside Drive spoke in opposition to the petition of Portsmouth Toyota. He noted that the dealership was unique in that it is the only dealership he found that abuts so many single-family homes.

Philip Geraci of 237 Hillside Drive spoke in opposition to the petition of Portsmouth Toyota. He pointed out that he agreed with all of those who had spoke in opposition to this request before the Board and wanted to point out that the only letter in favor of the project was from a current tenant of the space in question and that was also leaving.

Charlie Griffin 210 Hillside Drive spoke for his wife in opposition to the petition of Portsmouth Toyota. He presented a packet to the Board and exclaimed that his neighbors were there for the third time to protect the ordinance and their best interests and noted a case that reflected a similar situation. He stated that the current petition was seeking the same variance request as was first sought in the first petition requested before the Board yet the wording was slightly different. He mentioned that this petition was not materially different in nature and degree of the petition that the Board denied in August. He went on about the fact that the applicant might not have sufficient space to display every single car that they would like to display, but that it didn't mean that they were prevented from making reasonable use of the property by being allowed a cross-section of models of new and used automobiles for sale. He stated that the purpose of a variance was to grant the minimum relief and not the maximum. He felt that the applicant had not made the alternative example of parking some of the autos in the area of the southwest corner of the building or parking some in the recessed area of the building on the north side. In addition, he noted that because New Hampshire Southern University was still there, that they are using some of the spaces that Portsmouth Toyota could use which reiterated the fact that the applicant has not made any effort in making reasonable use of the property. He also presented the question of whether the application was due to economic hardship or just mere convenience. In closing, he urged the Board to deny the petition due to the request not being a material change in circumstances.

Chairman LeBlanc asked if there was anyone else who wished to speak in opposition of the petition.

Chairman LeBlanc asked if anyone wished to speak to, for or against.

Jim Boyle noted the real estate values of some homes located on Hillside Drive. He stated that the average price for homes sold over a year and half ago were \$256,000.00 and when sold the following year, the values had increased (September 30, 2004 for \$400,000.00, January 15, 2004 for \$550,000.00, and September 30, 2005 for \$390,000.00). Additionally, he stated that it was good news for the City of Portsmouth that their property values have continued to skyrocket.

Chairman LeBlanc asked if there was anyone who wished to speak to, for or against that has not spoke before.

Michael Donah of 152 Hillside Drive spoke in opposition to the last statements made by Jim Boyle. He stated that he knew a lot of the homeowners that sold properties in the area that Mr. Boyle had mentioned and proclaimed that it was an inaccurate depiction of the true values of the homes due to the difference in square footage and amenities that each home had to offer. Additionally, he stated that Mr. Boyle was comparing apples to oranges.

Bernie Pelech, representing both Portsmouth Toyota and Jim Boyle, spoke in support of the petition and in opposition of the remarks made against Portsmouth Toyota's conduct. In addition, he wanted to clarify what they were seeking within the petition before the Board and reiterated that the petition language was inaccurate. He said that they were seeking to have a 150-ft. buffer when a 200-ft. buffer is required.

Chairman LeBlanc stated that the Public Hearing was now closed.

DECISION OF THE BOARD

A motion to apply the case, *Fisher v. Dover* noted by Charlie Griffin, whether or not the criteria had been met was presented by Mr. Witham.

Chairman LeBlanc asked the Board for all those in favor to signify with an Aye and all those opposed to signify with Nay. The motion failed unanimously.

Mr. Jousse moved that the variance be denied and Mr. Holloway seconded.

Mr. Jousse stated that the applicant was requesting a large amount of relief and stated that he has been against it from the start and is still against it. Additionally, he stated that the applicant was aware of the restrictions when he purchased the property and that there was ample room on the lot where the applicant could display or store vehicles on the paved area outside of the buffer zone. He noted that buffer zones were established to protect neighborhoods from the intrusion of businesses and that they should be safeguarded.

Mr. Holloway stated that he seconded and agreed with the reasons for denial as stated previously by Mr. Jousse.

Chairman LeBlanc asked if there were any comments from the Board.

Mr. Witham stated that he would not be for the petition as presented but would be for the motion to grant with stiff stipulations, i.e. only allow cars to be parked there without any additional unconventional means of marketing. He also felt that it seemed to be reasonable for the dealership to park their cars there.

Mr. Marchewka stated that he agreed with Mr. Witham and noted that there was a significant difference between a parked car and a car for sale.

Mr. Horrigan felt that he would like to allow the applicant to be able make use of the property but was very concerned about the impact of the vehicles displayed for sale on the surrounding neighbors.

Chairman LeBlanc stated that he would deny the motion before the Board. He felt that with some serious restrictions they would be able to make it so both the dealership and the residents could share the area.

Mr. Witham proposed language to be considered as the language used for the stipulations.

Chairman LeBlanc asked the Board for all those in favor of the Motion to Deny; the motion failed by a 3-4 vote with Mr. Marchewka, Mr. Horrigan, Mr. Witham, and Chairman LeBlanc voting in opposition.

Mr. Witham made a motion to approve the application as presented and advertised but to approve with stiff stipulations attached to the approval and the language would read as follows:

“No vehicles of any type parked within the 200 ft. buffer zone shall be advertised for sale or used to advertise, beyond the side window sales sticker; this includes, but is not limited to, the exclusion of balloons, front windshield signage, open hood signage, ribbons, banners and other forms of temporary signage.”

In addition, Mr. Witham proposed the following stipulation language to be added to the approval “No vehicles (or signs other than existing signs) shall be placed on the grass areas in the 200 foot buffer zone for display, storage, or for any other reason other than property maintenance.”

Chairman LeBlanc asked if there was a second to the motion to approve with stipulations. Mr. Holloway said he would second. Chairman LeBlanc repeated to the Board the stipulation language that would be additional conditions as part of the approval,

- “If lot lighting is provided, it shall be designed in a such a manner as to not create a hazard on public ways or be objectionable to adjacent properties.
- Light poles shall not exceed 16 ft., which is the height the Planning Board has been looking at.
- No vehicles (or signs other than existing signs), shall be placed on the grass areas in the 200-ft buffer zone for display, storage or any other reason other than property maintenance.
- The volume of the outside speaker system shall be kept low enough as to not be heard by abutting properties. The tendency would be to turn the system up to be heard farther away from the building now that the cars would be farther away from the building.
- No vehicles of any type parked within the 200 ft buffer zone shall be advertised for sale or used to advertise, beyond the side window sales sticker, this includes, nut not limited to, the exclusion of balloons, front windshield signage, open hood signage, ribbons and banners and other forms of temporary signage.

Chairman LeBlanc asked the Board for all those in favor of the motion to grant with stipulations; the motion passed by a 5-2 vote with Mr. Jousse and Mr. Parrottt voting in the opposition.

Mr. Jousse made the motion to suspend the ten o'clock rule to continue with the remainder of the petitions on the agenda.

The Chairman called for the vote on the motion to proceed and the motion passed via a vote of 6-1.

I. PUBLIC HEARINGS

- 1) Petition of Roland and Patricia M. Bussierie, owners, for property located at 6 Suzanne Drive wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) are requested to allow a 3'6" x 16' addition to the existing deck to accommodate a 16' x 16' sun room to the rear of the existing single family dwelling with: a) a 27.5'± rear yard where 30' is the minimum required and b) 24.8% building coverage where 20% is the maximum allowed. Said property is shown on Assessor Plan 292 as Lot 84 and lies within the Single Residence B district. Case # 10-1

SPEAKING IN FAVOR OF THE PETITION

Ray Stevens spoke on behalf of the owners and the petition. He passed out a petition signed by all of the abutters that expressed their support of the petition. He indicated that the request was the norm within the surrounding neighborhood and its properties and that it would improve the values of the surrounding properties as well. He went over the criteria for *Boccia* and explained how the proposed met that criteria. The sunroom would only add approximately 2% lot coverage to what was already there with minimal rear encroachment. He asked the Board if there were any questions.

Mr. Parrott asked what a 2 1/2" room would look like since that was how it was advertised.

Mr. Stevens stated that was the wall thickness.

Mr. Parrott answered that was what they had assumed it to mean.

Mr. Parrott asked if they were going to expand what was there.

Mr. Stevens answered no.

Mr. Witham asked if it was the pool that was one of the factors which made the applicant's need a variance.

Ms. Tillman answered yes.

Mr. Witham asked if they knew if it was an above ground pool.

Ms. Tillman answered yes.

Mr. Marchewka asked if they were covering the deck.

Mr. Stevens answered yes.

Chairman LeBlanc asked if there would be real studs in there.

Mr. Stevens answered no.

Chairman LeBlanc asked what the roof was made out of.

Mr. Stevens answered an aluminum skin with chrome in between it, a structural panel.

Chairman LeBlanc asked if it was solid.

Mr. Stevens answered yes.

Chairman LeBlanc asked if there was anyone else that wished to speak to, for or against.

Seeing no one rise, the Chairman declared the public hearing closed.

DECISION OF THE BOARD

Mr. Parrott made a motion to approve as presented and advertised and Mr. Marchewka seconded with the stipulation that the room remain a three-season porch and not an expansion to the house.

Mr. Parrott did not think the relief requested was contrary to the public interest since the abutters voiced their approval. He named off the other criteria necessary to meet to obtain a variance as set forth by the *Boccia* case and explained how the applicant and the proposed met the same. He thought it was reasonable and would grant the requests.

Mr. Marchewka concurred with Mr. Parrott.

Chairman LeBlanc asked for any further comment by the Board and hearing none, he called for the vote to grant the variances as presented and advertised with the stipulation and the motion passed via a unanimous vote of 7-0.

- 2) Petition of Parade Office LLC, owner, for property located at 100 High Street wherein a Special Exception as allowed in Article II, Section 10-208(51) is requested to allow 4' x 8' by 4' high PSNH electric supply switch cabinet where such installation requires a Special Exception. Said property is shown on Assessor Plan 125 as Lot 1 and lies within the Central Business B and Historic A districts. Case # 10-2

SPEAKING IN FAVOR OF THE PETITION

Dante Angelucci, senior project manager, spoke on behalf of the owners and the petition. He stated that PSNH discovered that the area required a switch cabinet, which needed to be installed above ground. It would allow for a safer service area and reduce nearby excessive shutdowns. He stated that the switch would be environmentally friendly and they would surround the switch area by a cedar fence since it is located within the Historic District. He passed out letters submitted by PSNH that outlined the design criteria for the switch and the installation process of the switch aboveground. He urged the Board to grant the special exception request.

The engineer on the project explained the device and compared it to similar ones that are installed on residential homes to the Board. He offered photos of the existing equipment and photos of the proposed. He emphasized the fact that the installation of the switch was mostly for safety reasons.

Chairman LeBlanc asked if the transformers were part of the request.

He replied no.

Mr. Berg asked if there would be any noise associated with the switch.

The representative answered no and the device would be screened.

Mr. Horrigan asked if the switch would be vulnerable to weather.

The representative replied no.

Mr. Horrigan asked how they would address the issue of graffiti.

The representative answered that they would be screening in the switch and landscaping the area so no one would really know it was there.

Chairman LeBlanc asked if there was anyone who wished to speak to, for or against the petition.

Seeing no one rise, the Chairman declared the public hearing closed.

DECISION OF THE BOARD

Mr. Horrigan made the motion to grant the special exception as presented and advertised and Mr. Parrott seconded.

Mr. Horrigan stated that the request met all of the criteria for a special exception and he did not perceive any problem arising out of granting the special exception.

Mr. Parrott agreed with Mr. Horrigan because there were no factors that would make them consider denying the request and the application was straightforward.

Chairman LeBlanc called for the vote and the motion passed via a unanimous vote of 7-0.

II. ADJOURNMENT

At 10:13 PM, a motion was made and seconded to adjourn the meeting of the Board of Adjustment to next regularly scheduled meeting.

Respectfully submitted,

Christina Staples
Acting Secretary