

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

7:00 P.M.

**DECEMBER 28, 2004
(Reconvened From
December 21, 2004)**

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

MEMBERS EXCUSED: Vice-Chairman James Horrigan

ALSO PRESENT: Lucy Tillman, Planner

The Portsmouth Board of Adjustment reconvened at 7:01 p.m. Chairman LeBlanc informed the Board and the public that the petitioners for item #11 had asked that it be tabled to the following month's meeting in January 2005.

I. PUBLIC HEARINGS

8) Petition of **Michael J. and Leanne Edwards owners**, for property located at **64 Brackett Road** wherein a Variance from Article III, Section 10-302(A) is requested to allow the following: a) an irregular shaped 14' x 22' 1 ½ story attached garage with a 3.1' right side yard where 10' is the minimum required, b) a 16' x 38' irregular shaped 1 ½ story rear addition with an 8.6' right side yard where 10' is the minimum required, c) a 12' x 27' irregular shaped deck with an 18.7' rear yard where 30' is the minimum required, and , d) 33% building coverage where 20% is the maximum allowed. Said property is shown on Assessor Plan 206 as Lot 22 and lies within the Single Residence B district. Case # 12-7

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernard Pelech spoke on behalf of the owners and the petition. He passed out photographs of the one and a half story cape. He pointed out that it was an extremely small lot consisting of approximately 6,750 square feet. He stated that the current owners have three small children, no garage and a wet basement and as a result they would like to expand the residence for additional living space. He remarked that it was an area variance they were seeking and explained how the subject property satisfied the criteria necessary to obtain a variance by applying the *Boccia* standard. He read aloud a letter in support of the petition from one of the abutters and submitted the same to the Board. He also indicated that the owners had spoken with all of their neighbors, which all had voiced their support for the same. He stated that when the survey was performed it was discovered that there was an encroachment of a neighbor's driveway on the left-hand side as you look at the property. Presently, they were in the process of working out the conveyance the strip of land where the driveway encroached upon the owners' property. They were proposing a 14 foot wide, one car garage and given the constraints of the lot, a two-car garage was out of the question as well as the rear addition and deck. He reiterated that the family would like to remain in the neighborhood but only could do so if their relief requested was granted. He urged the Board to grant their request and asked if there were any questions.

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

Mr. Jousse asked Attorney Pelech to explain why there was a bump-out on the rear proposed deck. Attorney Pelech replied that he could not but the owner could.

Mr. Edwards, owner of the property spoke and explained that section was actually narrower than the one that exists so he bumped the small section out to accommodate a table.

Mr. Jousse asked what the width was.

Mr. Edwards answered about two and a half feet.

Chairman LeBlanc asked if there were any questions from the Board, hearing none, the Chair asked Attorney Pelech about the fence on the right side of the yard and whether it was on the property line.

Attorney Pelech answered yes, that was correct.

Chairman LeBlanc asked about the proposed garage.

Attorney Pelech answered 3.5 feet from the fence.

Chairman LeBlanc asked about the stairs, entrance into the house, if that would remain the same since it would be right in the middle of the garage.

Mr. Edwards clarified Chairman LeBlanc's question by asking if he meant the stairs on the side of the house.

Chairman LeBlanc said that was correct.

Mr. Edwards said that was part of the existing deck and that would go away. He said that the garage exactly mimicked the side of the house and would be flush with the property.

Chairman LeBlanc said the plan showed it a foot offset from the front corner.

Mr. Edwards said that was possible.

Chairman LeBlanc said no.

Mr. Edwards replied that the stairs in question did disappear on the main entrance.

Chairman LeBlanc said so that side entrance would go away then.

Mr. Edwards said yes, there would be no entrance.

Chairman LeBlanc said so that would be towards the back of the garage then.

Mr. Edwards said that is correct.

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

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

Mike Crawfield spoke in favor of the petition. He stated that he had lived in the neighborhood for the past thirty years and was very much in support of the petitioner's project. He thought the proposed would be very tasteful and would be a benefit to the neighborhood.

Chairman LeBlanc asked if he was the next door neighbor.

Mr. Crawford stated he lived five houses away but that it was a very close neighborhood.

Chairman LeBlanc asked if there was anyone else who wished to speak in favor of the petition. The Chairman then asked the public to please form a line behind the podium if they wished to speak.

James Lemay spoke in favor of the petition. He stated that they were very much in favor of the petitioner's request and pointed out that one of the main reasons was that the neighborhood was evolving. He didn't think that the strict standards were appropriate to weigh against the subject property. He said that they would like to do what the petitioners were seeking to do as well. He thought the homeowner would be put in a difficult situation to decide what to do if they were not permitted to do what they were requesting to do and could result in them leaving the area to get the space they need. He thought that was very unnecessary and that would be the hardship on the petitioner. He said that the design fit in well within the context and spirit of the neighborhood. He further stated that it would have a good impact on the neighborhood and increase the values of the homes within the said neighborhood.

Brad Lown spoke in favor of the petition. He said he was the property across the street from the petitioners. He noted his support for the petition and he thought it was in the public interest to keep certain individuals like the petitioners in the City. He said the plans were reasonable and him and his wife supported the same.

Bob Brackett spoke for the petition. He said he and his wife had resided in the neighborhood for thirteen years and liked the idea and understood that the petitioners needed to expand and voiced their support for the same.

Craig Seavey of 2 Brackett Lane up the road from the residence spoke in favor of the petition. He felt it would be a great loss for the petitioner to have to leave the neighborhood and wanted to show his and his wife's support for the same.

SPEAKING IN OPPOSITION TO THE PETITION:

Chairman LeBlanc said thank you and asked if there was anyone that wished to speak in opposition.

Earl Albert, an abutter to the property, spoke in opposition to the petition. He stated that he had resided in his home for over fifty-five years and said it was a very small area between his property and the petitioners'. He wished there was some other way to handle it. He felt there would some effect on his view from the back porch and his dining room and he was concerned how it would effect his property.

Chairman LeBlanc asked if the garage wasn't part of the construction would that alleviate some of his concern.

Mr. Albert did not think so.

Chairman LeBlanc asked if he was the house to the right of the subject property.

Mr. Albert said yes.

Chairman asked if there was anyone else to speak in opposition, seeing no one rise, the Chairman asked if there was anyone who wished to speak to, for or against the petition.

Gene Lacroce spoke on behalf of himself and his wife. He stated that he lived at 68 Brackett Road and explained that his property abutted the petitioner's property. He mentioned the survey taken of the property and expressed one of his concerns with the proposal about the petitioner's boundary lines submitted in the plans. He did not have a problem with the improvements in themselves as proposed on the petition. In regards to the property lines, he wanted to make clear that he strongly objected to any suggestion that the boundary line of the petitioner's property included a 4 x 100 strip of land that he believed to be his property. For over twenty years, he stated that his family had uninterrupted use of the driveway and land that constitute a 4 x 100 foot parcel

referred to in the petitioner's plan. During that period of time, it was actual, it was open and it was exclusive, by virtue of such use and the duration of such use, title passed to be adverse possession. That was why he believed it was his property and not that of the petitioners. He did reiterate that he did have a good relationship with the petitioners since it was such a close neighborhood and noted Attorney Pelech's comments earlier that they were working very hard to fix the title issue. It was his desire to clear the title to his land and stated that he would do whatever necessary to clear up the same. He reiterated that he had no objections to the improvements as long as they did not include his land and that the improvements proposed were based on the 62 x 100 lot that excluded his land. He submitted a letter to the Board from him addressing the same concerns voiced at the present meeting and offered to answer any questions.

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

Mr. Berg asked about the site plan submitted by the applicant which showed the subject strip and denoted a statement proclaiming "strip acquired by the applicant".

Mr. Lacroce stated he didn't know what that meant and reiterated that by virtue of adverse possession, that strip of land was his.

Mr. MacCallum asked Mr. Lacroce if he was aware that the Board did not have jurisdiction to adjudicate his claim of adverse possession.

Mr. Lacroce said he understood.

Mr. MacCallum said he would need to take that up with Superior Court.

Mr. Lacroce said he understood and said the reason he spoke was because the decision is weighed upon the particular piece of property which was inaccurate.

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

Attorney Pelech explained that the survey was in conformance with the deed.

Mr. Berg said assuming that the abutter prevailed, he asked if it would be adverse possession and they therefore take title to the strip or would it be granted in a form of descriptive easement.

Attorney Pelech answered that it depended on what the Court would find.

Mr. Berg said if the Court would order it to be some sort of descriptive easement, ownership would be retained by the applicant, so all of the lot sizes and measurements would be intact.

Attorney Pelech believed they would.

Mr. Parrott noted no dimensions on were the first page of the plan for the lot itself.

Attorney Pelech said they didn't do a full survey.

Mr. Parrott didn't see how they could work with that plan when the dimensions of the lot were not mentioned.

Attorney Pelech stated that the Board's requirements for submission did not require a surveyed plan and he said that their submission met the requirements for submission set by the Board.

Mr. Parrott said his point was that it was a licensed, signed, dated, stamped land map of one lot with no dimensions and it was very confusing.

Attorney Pelech said it was accepted by the Planning Department and if it didn't meet the requirements then he said the Board could table it.

Mr. Marchewka said the plan was to scale and they could measure the dimensions.

Chairman LeBlanc said that they had the dimensions on the plot plan from the packet.

Mr. Berg said that the tax map said 62 feet plus the four in question, so that would make the width 66 feet.

Mr. Parrott said that was his basic point that they had a dimensional question before them raised by the abutter and the map doesn't have any dimensions on it.

Mr. Witham said the tax map showed 6750 as the size and the ambit showed 6748, a different number which suggested that someone did arithmetic and that gave him comfort even though the basis of the numbers weren't there.

Mr. Marchewka said if they measured the front of the lot it was 66 feet so they added the four feet.

Chairman LeBlanc said that he didn't think the Board could go ahead with it.

Ms. Tillman said they could table it for further information.

Chairman LeBlanc said that would affect the percentage of the coverage of the lot.

Mr. Holloway moved to table the petition until the lot line issue was resolved.

Mr. Parrott seconded the table motion.

Ms. Tillman asked when they were tabling it to.

Chairman LeBlanc said until the lot line issue was resolved.

Attorney Pelech asked if he needed to submit another plan with the dimensions on it.

Chairman LeBlanc said yes, that they would need a plan with full dimensions and the lot line issue resolved because that affected the amount of percentage involved and advertised.

Chairman LeBlanc called for the vote and the motion to table passed via a vote of 6-1.

9) Petition of **Northeast Credit Union, owner**, for property located at **100 Borthwick Avenue** wherein the following are requested in conjunction with a 3 story addition (8,000± sf per floor) to the existing banking facility for use as "financial retail and business offices": 1) Variances from Article II, Section 10-209 and Article IV, Section 10-401(A)(1)(c) to allow an existing financial facility to expand on the site, 2) Variances from Article XII, Section 10-1201(A)(3)(f) and Article V, Section 10-503 and 10-504(B) to allow the existing and proposed off-street parking, maneuvering space and traffic aisles within the required setbacks and including the existing vegetation to provide screening for the abutting residentially zoned property without additional plantings; and, 3) a Variance from Article XII, Section 10-1203 to allow 2 loading areas to be provided where 5 loading areas are required and to be located within 100' of property zoned residentially. Said property is shown on Assessor Plan 259 as Lot 15 and lies within the Office Research district. Case # 12-8

Let the record reflect that Mr. Berg recused himself and Mr. MacCallum was sitting in.

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernard Pelech spoke on behalf of the petitioners and the petition. He said that they were seeking both use and an area, dimensional variance and would therefore apply both the *Boccia* and the *Simplex* standard. He noted that the variance was to allow a financial institution in the district where such use was not allowed. He said that the petitioner had existed in that location for quite sometime and had served the needs of the people in the community. He further stated that it was not an ideal lot and went over some special conditions that applied to both tests. He noted that the proposed addition met the setbacks and that the structure would be in compliance with the zoning ordinance. He said it was a reasonable use and should be an allowed use. He pointed out that the petitioner was a good neighbor and had been there for a number of years. He thought what was proposed was more in keeping with the other businesses or properties along Borthwick Avenue and would benefit the community. They planned to increase the buffer zone between the proposed and the residential neighborhood as well as move the new proposed parking area further away from the same.

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

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

Hearing none, Chairman LeBlanc asked if there was anyone who wished to speak in opposition.

Steven Jones of 56 Harvard Street spoke in opposition. He stated that his property was directly behind the petitioners' property and addressed Attorney Pelech's statements about the proposed not directly affecting or impacting the neighborhood. He did not agree with those statements because he said there was no buffer zone whatsoever. He stated that the amount of light on the proposed site was intense and a problem. He said on the rear of the building there is an illuminated sign and that the property at night is lit up like a football field. He was not against the petitioners expanding their property but he was afraid about the amount of lighting that would be implemented if the proposed were allowed since the current lighting on the site was too much. He also voiced his concern about the traffic.

Chairman LeBlanc asked if there was traffic on the site through the night that disturbed him and his family.

Mr. Jones answered yes.

Chairman LeBlanc asked all night long.

Mr. Jones said relatively continually.

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

Mr. Holloway asked how the screening was, if it was worse in the summer, winter, etc.

Mr. Jones said there really was no screening whatsoever.

Chairman LeBlanc asked if Mr. Jones had seen the plans that the petitioners were requesting.

Mr. Jones said no, this was the first time he had seen them.

Chairman LeBlanc said because there are plantings.

Mr. Jones said those were shrubs and would not screen anything.

Mr. Parrott asked Mr. Jones to point out on the map where his property was in relation to the petitioners.

Mr. Parrott asked who could see the illuminated sign other than Mr. Jones' neighborhood.

Mr. Jones said no one.

Chairman LeBlanc asked if Mr. Jones had contacted the petitioners about the sign.

Mr. Jones said no.

Mr. Parrott asked if there was any attempt on the behalf of the petitioners to contact Mr. Jones' neighborhood to explain their project.

Mr. Jones said no.

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

Hearing none, the Chair asked if there was anyone who wished to speak to, for or against.

Lenora Wise of Newberry Avenue stated that she had heard the petitioners' property was within the 100 foot wetland buffer zone and wanted some clarification as to whether it was or not since it was not mentioned during the presentation.

Attorney Pelech answered that the property was not within that buffer zone and stated he had spoken with his clients who said they would turn off the sign at night. He noted that the petition still had to go before site review and the planning board so they would address the lighting issue at that time. He reiterated that his clients wanted to be good neighbors and he would work with Ms. Tillman to ensure as much landscaping and screening as possible would be implemented to improve the buffer zone.

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

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

DECISION OF THE BOARD

Mr. MacCallum asked Ms. Tillman what the situation was with the wetlands.

Ms. Tillman did not believe there was any wetland issues, she stated that it did not need a conditional use permit. She stated that they looked at the wetland maps with Mr. Britz and there were none in that area.

Mr. MacCallum noted a memo indicating the PSNH easement and mentioned wetlands.

Ms. Tillman clarified that the mention of the wetland area was for the Liberty Mutual property.

Chairman LeBlanc stated according to the locus plan provided, there were no wetlands.

Mr. Marchewka said the lot area was 12.7 acres and he asked if they were looking at half of that for the development.

Ms. Tillman said probably less than that.

Mr. Marchewka said the other half was leased, used or?

Ms. Tillman said Attorney Pelech could answer that.

Attorney Pelech said that Liberty Mutual had a parking lot on their property and another overflow parking area, which they lease from the petitioners.

Ms. Tillman pointed out that there was a rail spur in that area.

Mr. Marchewka made a motion to approve as presented and advertised with the stipulation that the Planning Department or Site Review ensure that lighting be kept to a minimum and the sign at the rear of the property be turned off at night.

Ms. Tillman suggested modifying the stipulation to include the existing and the proposed lighting.

Mr. Holloway seconded.

Mr. Marchewka explained why he felt the proposed satisfied both criterias of the Boccia and the Simplex standard and thought it was an improvement to what currently existed on the site. He also thought it was a reasonable expansion of the use that currently existed on the site. For those reasons he felt the relief should be granted.

Mr. Holloway concurred with Mr. Marchewka's statements and reasoning.

Chairman LeBlanc added that one of the issues that the Board looks for is that the requested variances be the minimal that can be granted and still meet the needs of the applicant. He noted that one of the conditions met by the applicant was that the building met all of the setbacks from the lot lines and it was just the parking and the loading docks that were not within the setbacks. He also felt the lighting and the screening conditions added to the approval met the conditions and problems that were addressed by the abutter.

Chairman LeBlanc asked if there was further comment from the Board, hearing none, the Chair called for the vote on the motion with the following three stipulations: (1) that the existing and proposed lighting meet the current minimum standards of site review; (2) that the sign on the rear of the building be turned off at 6:00 PM; and (3) that screening be provided along the rear of the lot consistent with the easements in place, and the motion passed via a unanimous vote of 7-0.

10) Petition of **TDSG, LLC, owner**, for property located at **2992A Lafayette Road** wherein an Appeal from an Administrative Decision is requested concerning the determination that a wholesale showroom is not an allowed use. Notwithstanding the above, if the appeal is denied, a Variance from Article II, Section 10-207 is requested to allow a proposed business office to have an associated wholesale showroom in a zone where wholesale showrooms are not allowed. Said property is shown on Assessor Plan 292 as Lot 14 and lies within the Mixed Residential Business district. Case # 12-9

Let the record reflect that Mr. Berg recused himself once again and Mr. MacCallum was sitting in.

SPEAKING IN FAVOR OF THE PETITION

Attorney John Bosen spoke on behalf of the owners and the petition. He stated that the square footage of the site was 1228 and it was a two-story unit. They were requesting an appeal on the prior decision and were also requesting a variance to allow the use. He said it would be a small showroom and no inventory would be kept on site as well as very little traffic in and out of the site. He stated that the ordinance itself did not prohibit wholesale showrooms. It does permit trade, craft and general service establishments and specifies, shops for plumbers, electricians, painters and include a retail sales area of a total of 2,000 square feet or less. He reiterated that their request was much less than that. He believed that their request of a wholesale showroom was an allowed use of the definition of trade establishment, which was an allowed use under that ordinance. He said that it could be argued that it was general service establishment, which was also an allowed use. Under

those two definitions, he felt their request was appropriate under the ordinance and noted that there were not any other places for what that meant.

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

Mr. Witham asked what he would consider the trade to be.

Attorney Bosen answered lumber.

Mr. Witham asked liked kitchen cabinets, flooring.

Attorney Bosen said yes and windows and doors, things of that nature.

Chairman LeBlanc asked about the products that Attorney Bosen explained they would be selling if they were manufactured parts.

Attorney Bosen indicated there would be more windows, doors and cabinetry.

Chairman LeBlanc asked again if they would be manufactured goods and not just loose lumber because Mr. Tillman indicated another section of the ordinance that permitted lumber and wholesale lumber yards in the industrial zone and he stated that it was a proscriptive ordinance so if it didn't say you can do it you can't do it.

Attorney Bosen said right, and said that was were the grey area was because it wasn't really a lumber yard and that's why the goods he would be selling fit in better under the trade definition of the ordinance.

Chairman LeBlanc asked again if they were manufactured wooden goods.

Tom Perrault owner of the property said that the actual lot was really a sales office, wholesale sales. He said it was really a sales office for the salesman since the main office was in Maine they wanted a closer office on the seacoast.

Chairman LeBlanc clarified that he would not be able to just walk in and purchase something since it was on a wholesale basis.

Mr. Perrault said right, it was more for the contractors.

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

Chairman LeBlanc asked if there was anyone who wished to speak in favor of the Administrative Appeal.

Chairman LeBlanc asked if there was anyone who wished to speak in opposition.

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

Seeing no one rise, the Chair declared that portion of the hearing closed.

DECISION OF THE BOARD

Mr. Parrott moved that the decision of the Administrative Appeal be upheld.

Mr. Holloway seconded.

Mr. Parrott said he did not see anywhere in the ordinance the mention of the word wholesale or showroom. He said therefore to say it was allowed was not correct. The ordinance mentioned retail uses and many specifics under that section but not wholesale or a showroom. He said that was on purpose since it was a mixed residential area and noted that when the ordinance was written they wanted to make sure the scale of spaces were of reasonable size. He indicated that wholesale showrooms were very large typically and felt it was not allowed within that district.

Mr. Holloway concurred.

Chairman LeBlanc asked for comments from the Board and hearing none, the Chair called for the vote on the motion to uphold the Administrative Appeal and the motion passed via a unanimous vote of 7-0.

SPEAKING IN FAVOR OF THE PETITION TO GRANT A VARIANCE.

Chairman LeBlanc informed Attorney Bosen that he could proceed with his variance request. Attorney Bosen said they were requesting a variance to allow a proposed business office to have an associated wholesale showroom in a zone where wholesale showrooms were not allowed. He distributed materials to the Board and addressed the criteria necessary to obtain a variance and explained how they satisfied the same. He distributed materials to the Board and addressed the criteria necessary to obtain a variance and explained how they satisfied the same. He thought it was a far less intense use and compared the petitioners' business to others in the same area as the proposed. He stated that the proposed location was well suited for the proposed use and urged the Board to grant the petitioner's request.

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

Chairman LeBlanc asked if there would any deliveries.

Attorney Bosen stated it was just showroom and there would be no inventory and no deliveries.

Mr. MacCallum asked Ms. Tillman what the intent of district the zone was created for.

Ms. Tillman said it replaced the neighborhood business and it was created to be a zone that would be compatible with residential properties and business properties, a mix, but less-intense business use of the property. They did not contemplate that type of use.

Mr. MacCallum did not have a problem with granting the request of the applicant.

Mr. MacCallum was worried about what would happen down the road after permitting the granting of a variance making it allowed to have wholesale showrooms on that property.

Mr. MacCallum asked Ms. Tillman if the variance was granted and someone else bought the property, would that someone then have to come before the Board to seek the same variance.

Ms. Tillman answered that would be correct.

Chairman LeBlanc asked what the total square footage of the total operation was.

Attorney Bosen answered 1248 square feet.

Chairman LeBlanc clarified that 600 square feet of that would be used for the showroom.

Attorney Bosen said that was correct.

Chairman LeBlanc asked if there was any other questions.

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. Marchewka made a motion that the petition be approved as presented and advertised.

Mr. Parrott seconded.

Mr. Marchewka thought it was a grey area and that it seemed more like a general business office. He thought it was a very ancillary use and explained how the applicant satisfied the *Simplex* standard. He felt it wouldn't be as heavily traveled as the previous occupants' businesses in the subject space and was a reasonable use. For those reasons he would grant the variance.

Mr. Parrott felt the use was compatible with the use of the district. He proposed a stipulation to limit the type of goods within the wholesale showroom to be manufactured millworks, to include doors, windows and cabinetry.

Chairman LeBlanc asked if there was any other comment.

Mr. Jousse wanted to add the stipulation that the display area would be restricted to the first floor.

Mr. Marchewka didn't have a problem with that.

Mr. Parrott wanted to know what the reason was for that suggested stipulation.

Mr. Jousse said that they presented the display would be downstairs and the office upstairs and he felt it would be a good idea to reemphasize.

Mr. Parrott said that was what was presented but that would be fine.

Attorney Bosen said most of the products would be downstairs.

Chairman LeBlanc called for the vote to grant with the stipulations that the display area of the showroom be downstairs and that the products only consist of manufactured millworks, to include doors, windows and cabinetry and the motion passed via unanimous vote of 7-0.

11) Petition of **Stephanie J. Lindenthal, owner**, for property located at **20 Pleasant Point Drive** wherein the following are requested: 1) a Variance from Article III, Section 10-301(A)(7) to allow a 4,039 sf footprint 1 ½ single family dwelling after the demolition of the existing single family dwelling 69.3' from the mean high water line and the attached deck 61.1' from the mean high water line where 100' is the minimum required and, 2) a Variance from Article III, Section 10-302(A) to allow the left front corner of the proposed dwelling to have a 21.3' front yard where 30' is the minimum required. Said property is shown on Assessor Plan 207 as Lot 8 and lies within the Single Residence B district. Case # 12-10

This petition was tabled to the following month's meeting due to potential of unresolved issues associated with the treatment and disposal of waste on that property.

Mr. Witham moved to table and Mr. Parrott seconded.

The Chairman called for the vote on the motion to table and the motion passed via a unanimous vote of 7-0.

Minutes Approved 9-27-05

12) Petition of **Theresa N. Pesarik, owner**, for property located at **214 Elwyn Avenue** wherein Variances from Article IV, Section 10-402(B) and Article III, Section 10-302(A) are requested to allow a 15' x 28' garage with loft with: a) a 1'8"± left side yard where 11' is the minimum required, and b) 29.1% building coverage where 25% is the maximum allowed. Said property is shown on Assessor Plan 112 as Lot 26 and lies within the General Residence A district. Case # 12-11

SPEAKING IN FAVOR OF THE PETITION

Sam Littlefield stated he was the builder for the project. They were proposing to replace the existing garage with the new proposed garage. The new garage would provide much needed storage and the existing garage needs the improvement.

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

Chairman LeBlanc asked if there was any way the garage could be moved further away from the property line and still have access to it.

Mr. Littlefield said he supposed she could but that would make her lose some of her yard and there would be quite an expense as well.

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

Chairman LeBlanc asked if there was anyone who wished to speak in opposition.

Attorney David Klinko, attorney for the abutters of 224 Belknap spoke in opposition to the petition. He stated that there was no objection to the improvements or the coverage areas the issue was one side setback. He cited the *Boccia* standard and explained how the applicant did not satisfy the same. He stated that there was plenty of room for the applicant to build and not need a variance and did not believe it was a hardship because she did not want to lose some of her yard. The other issue was the location of the garage. He submitted photos of the same to the Board and explained that the soffit of the garage was too close to the neighbor's driveway and fence and would create ice and snow that would drop off onto their property. He urged the Board to deny the request as presented.

Chairman LeBlanc asked if the abutters' property swung around the back of the petitioner's property.

Attorney Klinko said yes, his understanding was that the abutters' property swings around to some extent.

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

Chairman LeBlanc asked about the plan submitted by Attorney Klinko which depicted the garage within the permissible envelope but he could not see anyway to get into the garage from the current driveway.

Attorney Klinko thought there was plenty of room to maneuver.

Chairman LeBlanc said it looked really tight.

Attorney Klinko said it could be rotated completely.

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

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

DECISION OF THE BOARD

Minutes Approved 9-27-05

Mr. Berg moved that the petition be denied.

Mr. Holloway seconded.

Mr. Berg could not see any hardship and did not feel it satisfied the *Boccia* standard and there were other options. He thought the garage could be smaller, could be moved back and thought the proposed was not reasonable.

Mr. Holloway concurred.

Chairman LeBlanc thought the relief that was being sought was not the minimum amount that could be sought and thought it was too much.

Chairman LeBlanc asked if there were any further comment from the Board, hearing none, the Chairman called for the vote on the motion to deny and the motion passed via a unanimous vote of 7-0.

13) Petition of **Robert McDowell, owner**, for property located at **379 Newcastle Avenue** wherein a Variance from Article IV, Section 10-402(B) is requested to allow a 10'8" x 16' one story garage with an 14.3'± front yard where 30' is the minimum required. Said property is shown on Assessor Plan 207 as Lot 4 and lies within the Single Residence B and Historic A districts. Case # 12-12

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernard Pelech spoke on behalf of the owner and the petition. He stated that he had recommended to the petitioner to take the advice of several Board members and rotate the garage ninety degrees, which increased the setback from 8 or 9 feet to 14.3 feet. He said the change would allow the petitioner to enter and exit the garage and not back onto the street. He explained that the lot was a narrow site and they were requesting an area variance for only the front setback as the remainder (i.e. lot coverage, side yard setbacks) complied with the ordinance. He felt that the request did satisfy the *Boccia* standard and explained how the petition met the same. He stated that at the prior meeting, there was some confusion as to where the right of way was and he explained that there was a survey that had been completed which enabled him to determine where the right of way was located. He said that the line was nine feet from the single white line from the edge of the pavement. They were proposing to turn the garage moving it 14.3 feet from the right of way line and that would be 23 feet from the single white line. He urged the Board to grant the variance request of the petitioner as presented.

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

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

Chairman LeBlanc asked if there was anyone who wished to speak in opposition.

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

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

DECISION OF THE BOARD

Mr. Jousse made a motion to grant the variance as presented and advertised.

Mr. Witham seconded.

Mr. Jousse explained that the property and request satisfied the Boccia standard. He stated that the new location and rotation of the proposed garage was much more safer and thought it was a reasonable request. For those reasons, he would grant the variance.

Mr. Witham concurred with Mr. Jousse's reasoning and statements.

Chairman LeBlanc called for the motion to grant as presented as advertised and the motion passed via a unanimous vote of 7-0.

III. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 9:36 p.m..

Respectfully submitted,

Christina V. Staples
Acting BOA Secretary