

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

7:00 p.m.

CITY COUNCIL CHAMBERS

**April 19, 2005
Reconvened on
April 26, 2005**

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MEMBERS PRESENT: Chairman Charles LeBlanc, Vice-Chairman David Witham, Alain Jousse, Arthur Parrott, Alternate Steven Berg, and Alternate Duncan MacCallum

MEMBERS EXCUSED: Nate Holloway, Bob Marchewka

ALSO PRESENT: Lucy Tillman

I. OLD BUSINESS

Chairman Charles LeBlanc announced that there were requests to table the following petitions:

- Petition #7, of Mark C. Adamy and Holly Lowe, owners, for property located at 350 Broad Street.
- Petition #11, the petition of Wal-Mart Real Estate Business Trust at 2460 Lafayette Road.
- Petition #13, the petition of Six Hundred Six Realty Trust, C J Annis and D I Rolde Trustees, owners, for property located at 606 Greenland Road.
- Petition #14, of HCA Realty, Inc. for property off Borthwick Avenue.

It was moved, seconded and passed that Petitions #7, #11 and #13 be tabled to the May meeting and that Petition #14 be tabled to a future date.

5) Petition of **Strider and Rose Sulley, owners**, for property located at **46 McNabb Court** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) are requested to allow the following: a) a 12' x 24' 1 ½ story addition with dormers with a 4' right side yard where 10' is the minimum required; b) a 4' x 12' 1 story rear addition with an 18' rear yard where 20' is the minimum required; c) a 4' x 12' left side porch with an 8' left side yard where 10' is the minimum required; d) a 4' x 12' two story right side addition with a 4' right side yard where 10' is the minimum required; and, e) 32% building coverage where 25% is the maximum allowed. Said property is shown on Assessor Plan 112 as Lot 59 and lies within the General Residence A district. Case # 4-5. Tabled from the meeting of April 19, 2005.

After reading the petition, Chairman Leblanc announced that there were only six Board members in attendance and four votes are required to grant a variance. The petitioners exercised their option, confirmed in writing, of withdrawing until the next month.

Petition of **Melissa Bicchieri, owner**, for property located at **206 Northwest Street** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) are requested to allow: a) a 16'2" x 19'8" 2 story addition with a 6'± front yard where 15' is the minimum required; and, b) a 12'3" x 15'6 ¾" 2 story addition with a 13'8"± rear yard where 20' is the minimum required. Said

property is shown on Assessor Plan 122 as Lot 6 and lies within the General Residence A and Historic A districts. Case # 4-6. Tabled from the meeting of April 19, 2005.

SPEAKING IN FAVOR OF THE PETITION:

Ms. Wendy Welton, as architect for the project, identified herself as speaking on behalf of the petitioners. On the site plan exhibit, she pointed out the existing house, a strip of land which is theoretically not-buildable as it is within the shoreland 50' building line, and the setbacks. She stated that, in order to add on to this house in a historic district, the only place would be an indicated triangle which doesn't connect to the house. What they're asking to do is take the house which is approximately 800-850 s.f., some of which is upstairs, and make it into a home that could house a family. They're proposing to square the house off where there is already an outbuilding and put an addition at the back which has the greatest likelihood of approval from the Historic District Commission with whom they had a work session and received positive feedback.

The reasons the applicants feel an addition 5'10" from the property line is appropriate are that across the road there is a certain amount of unbuildable land and there are no neighbors across the street. The addition continues the line of the existing house, the final size being 2,200 s.f., not an unreasonable size by today's standards. If they were not granted a variance, they could not add to the house and the house would, therefore, be undersized.

Ms. Welton mentioned several of the points for granting a variance, stating that the surrounding properties would actually be enhanced and the property would be tastefully designed and maintained. With regard to the spirit of the ordinance, she indicated that this is exactly the type of property ordinance variances are for. The shape of the lot and the proximity to water create a problem, requiring a variance. She believes it is in the public interest to allow people of good integrity to move to the community, thereby increasing the tax base. If the building stays the current size, it limits who can live there. Substantial justice would be done as the variance would be in the spirit of the ordinance with no harm to the public.

In answer to questions from Mr. Alain Jousse, Ms. Welton indicated that the outbuilding closest to the filled-in square on the plan will be used for a home office. One of the other two buildings will be removed at some point. When they go to Shoreland to obtain a shoreland waiver, they will be proposing to remove one of these along with a significant amount of pavement. There will be a lot of clean-up in that area. They have to wait to commit to removing the other building because they need that when they go to shoreland – to have something to talk about.

Chairman LeBlanc commented they were going to "trade the building," to which Ms. Welton concurred, plus taking out a lot of pavement, making the area around house residential. She also clarified that the home office use would not involve a fully functioning office and there would be no deliveries, etc. He just wants a place to do some work at home.

In response to further questions, Ms. Welton indicated that she believes the town owns the little turnaround at the end of the street, that the house was built in approximately 1870, and the pavement is the edge of the property.

Ms. Del Cannon also spoke in favor indicating she owns a house by the traffic circle and didn't believe the additions to the property would present a safety or traffic hazard.

Melissa Bicchieri identified herself as the owner and asked for the Board's consideration as they are hoping to return to the Portsmouth area.

**SPEAKING IN OPPOSITION TO THE PETITION; OR
SPEAKING TO, FOR, OR AGAINST THE PETITION:**

With no one coming forward, the public hearing was closed.

DECISION OF THE BOARD:

It was moved by Mr. Duncan MacCallum that the two parts of the petition be voted on separately and, with no objections from the Board, he moved that part (b) be granted as presented and advertised, which was seconded by Mr. Arthur Parrott. Following the *Boccia* analysis, the following reasons were outlined for granting the variance:

- The variance will not be contrary to the public interest and the value of surrounding properties will not be diminished as the property is near the end of a small side street and the proposal would not have an adverse impact on the public's interest.
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- The irregular shape of the lot is a special condition that results in hardship if the ordinance is literally enforced. The shape of the property, with one line serving as both side and rear, forces a reasonably placed addition into the setback and prevents it from being in full compliance.
- The most feasible method to achieve the sought benefit is to square off the structure as proposed.
- With minimal encroachment into the setback, the spirit of the ordinance will be served and there will be no harm to the public or surrounding properties.
- Given the lot shape and the minimal intrusion into the setback, substantial justice would be done by allowing the addition.

The Board voted unanimously to grant part (b) of the petition as presented and advertised.

Mr. David Witham then moved that part (a) of the petition be granted as presented and advertised, In seconding, Mr. Alain Jousse noted that there was a discrepancy between what had been advertised and what is on the plans. It was advertised as 16'-2" by 19'-8" and the plan shows 15'8" by 19'8". It was noted that the error was on the smaller side and the Board can grant less than what was advertised. Chairman LeBlanc asked the architect if what was going to be built was 15'8"x19'8" and that was confirmed. Ms. Tillman clarified that the dimension was 16'2" as originally submitted and as a result of the Historic District Commission work session, the plan was modified to a smaller dimension of 15'8", but the legal notice had already been published.

Following the *Boccia* analysis, the reasons for granting part (a) of the petition were outlined as the following:

- The property is near the end of a small side street and the proposal would not have an adverse impact on the public's interest.
- Special conditions exist creating a hardship and necessitating a variance to enable the proposed use of the property, one being the fact that if the addition were moved back, it would be intruding into the shoreland zone, which is less advantageous. Also, the existing main house is closer to the street than the proposed addition.

- The benefit sought could be achieved by another means but that would involve building in a shoreland zone which would not be environmentally feasible.
- The variance is consistent with the spirit of the ordinance, respecting light and air as well as the shoreland zone.
- Substantial justice is done as the location of the addition presents an obvious progression to the existing structure.
- With the planning put into the proposal, there will be no diminution in value of surrounding properties.

The Board voted to grant part (a) as presented, with Mr. MacCallum voting against the petition.

A) Amend Section V(1) of the Board of Adjustment Rules and Regulations.

By voice vote, the Board voted to move consideration of this item to the end of the agenda.

I. PUBLIC HEARINGS.

8) Petition of **Richard M. and Lee Ann Riley, owners**, for property located at **470 Banfield Road** wherein a Variance from Article II, Section 10-206 is requested to allow a 10' x 10' office on the lower level of the existing single family dwelling to be used for the business of purchasing vehicles at auction, no storage of said vehicles will be conducted on the property. Said property is shown on Assessor Plan 265 as Lot 2B and lies within the Single Residence A district. Case # 4-8

SPEAKING IN FAVOR OF THE PETITION:

Mr. Richard Riley identified himself as the owner and resident at 470 Banfield Road. He indicated he has a small 10'x10' office which he would like to use as a home occupation, purchasing vehicles at auction. There will be no storage of vehicles on the property and no signage. As far as impact on the neighborhood, there will be no additional appearance of a business, no deliveries, no impact on municipal services - just allow him to legitimize the business out of his house. Chairman LeBlanc asked if there would be any vehicles stored on site and Mr. Riley said there would not be.

After a question from Mr. MacCallum, it was noted that the Planning Department memorandum recommendation for a stipulation should read "...with this business shall not be stored...on this property."

In response to a question from Mr. Steven Berg, Ms. Tillman indicated that the reason the applicant had to appear was that this was not a typical home occupation. The City receives requests to have a dealership working out of a house and forms have to be signed stating whether the use is allowed by right or has received a variance. If Mr. Riley should choose to get dealer plates, a City representative has to sign another form beyond Board of Adjustment approval. If it was a Home Occupation I, as defined in the ordinance, he wouldn't have to come. If it was Home Occupation II, he would be here

for a special exception. Because he must declare himself as running a business out of his house, he has to come for a variance.

Mr. Riley also indicated, in response to additional questions, that this is establishing him as a legitimate broker of collectible cars; that this is not his full-time occupation; that a small space will suffice; that there will be no employees; and that he wants to keep his residence as a residence.

**SPEAKING IN OPPOSITION TO THE PETITION; OR
SPEAKING TO, FOR, OR AGAINST THE PETITION:**

With no one coming forward, the public hearing was closed.

DECISION OF THE BOARD:

Mr. Steven Berg moved to grant the petition as presented and advertised, except with the following stipulations:

- That any and all vehicles purchased, held, or being sold in conjunction with this business shall not be stored, repaired or displayed on the property.
- That the owner maintain compliance with the requirements of Home Occupation I of the ordinance.
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After some discussion among Mr. Berg, Ms. Tillman, Mr. Parrott and Mr. MacCallum, the following stipulations were added to the motion:

- That the Home Occupation I activity be limited to the 10' by 10' lower level of the dwelling as shown on the submitted plan.
- That there will be no signage.
- That there will be no other employees.

Mr. Arthur Parrott then seconded the motion.

The following points were outlined as the reasons for granting the variance:

- This would not be contrary to the spirit of the ordinance as it complies with all of the reasons we grant a home occupation use. Most of the business activity will be conducted on the telephones and computer
- With the protective stipulations, the activity will not hurt the public interest.
- The special condition that results in a hardship by applying the ordinance is that, while this use is non-intrusive, it is not specifically allowed by the ordinance.
- With no deliveries or signage, and with the stipulations, the value of surrounding properties will not be diminished.

The Board voted unanimously to grant the petition, as presented and advertised, except with the stipulations outlined in the motion.

9) The Portsmouth Board of Adjustment, acting pursuant to NH RSA 12-G:13 and Chapter 300 of the Pease Development Authority Zoning Requirements, will review and make a recommendation to the Board of Directors of the Pease Development Authority regarding the following petition of **Seacoast Newspapers, Inc., applicant**, for property located at **111 New Hampshire Avenue** wherein a Variance from the Pease Development Authority Zoning Ordinance Section 304.03(c) is requested to allow a 63,255 sf building footprint (17,500 sf 2nd floor) with a 40' ± front yard where 70' is the minimum required. Said property is shown on Assessor Plan 302 as Lot 4 and lies within the Industrial district. Case # 4-9

SPEAKING IN FAVOR OF THE PETITION:

Mr. Michael Donahue identified himself as being from the firm of Donahue, Tucker & Ciandella, accompanied this evening by Paul Briand, the Director of Operations for Seacoast Newspapers and the “go-to guy” on putting this project together, David Hogan of Dario Designs, the architectural firm specializing in the design of newspaper buildings including this structure, and Jeff Clifford of Altus Engineering.

Mr. Jeff Clifford was the first to speak stating he wanted to walk everyone through the site and referring to the displayed exhibits of the site plan as well as the landscape plan which had also been included in the submitted packets. He indicated areas on the plan, including the orientation of the site, a warehouse across the street, a wetland to the right, to the top the newly constructed 100 Corporate Avenue property and, to the left, twenty-five acres containing some old buildings.. This is a ten acre parcel which would be sub-divided out as a leased parcel. It includes three and a half acres of wetlands and six and a half acres of uplands.

He indicated that the primary concern that evening was how the front orientation of the building is relative to the setback which is 70 feet and they're asking for relief to 40 feet, much of that due to wetlands at back. Mr. Clifford indicated the locations and types of wetlands, with those to the right wooded and relatively high value and to the back a wet meadow. He pointed out the pinnacle in the wetlands that comes up to the building necessitating a long, narrow structure with a front loading dock. He presented an overlay, noting that the building configuration is slightly changed from the plan submitted. On the application the building width is 398'8". As the building has evolved, there was a section cut out and the entry extended so the building is 8' longer, or 406'8" now and the difference on the back is the canopy shown on the plan is now part of the full building and there will be another canopy that will cover some of the vehicles as they're loading.

The group has been before the City's pre-TAC three times and there was a lot of discussion about storm water and Mr. Clifford showed the latest site plan and stated that what they had done to respond to the City's concerns was to put a permanent pool on the site taking it to a higher level of treatment that exceeds state and town requirements.

Mr. Paul Briand identified himself as Director of Operations for Seacoast Newspapers and the project leader. He spoke of their history, growth and community commitment and involvement. He also described the production process in some detail and the challenges they faced in fitting large equipment into the building so that the work flows effectively.

Mr. David Hogan, the architect for the project pointed out some of the architectural concepts used and the planning and design decisions made in order to narrow the footprint in response to the site while still allowing production. They have tried to keep the scale intimate and low and taken efforts to minimize the impact of the docks. In response to questions, he indicated the berm masking the docks

will be on the right side and recessed. The distance from the rear to the rear wetland will be at the closest point, 38 feet.

Mr. Parrott asked if the Pease Development Authority had a wetlands setback regulation at this time as had been discussed. Mr. Clifford replied that this had been the subject of a discussion with the Technical Advisory Committee and that a program had been developed by a consultant, Mr. Jim Gold but it was not adopted as yet. Approval was expected shortly and they designed this proposal to comply with the proposed setback requirements.

Mr. Parrott asked what that was at the moment, and Mr. Clifford responded that it varied with each wetland. In this instance, the wetland has a zero setback requirement and the higher value wetland to the right has a 50 foot setback. The current Pease land use regulations don't provide a specific wetland setback but previous to the consultant's recommendation they were suggesting 25 feet to everyone.

Ms. Maria Stohl from the Pease Development Authority spoke stating that now in black and white they do not have a setback so it is zero, but their Board as landlord of the property can add stipulations and they are asking developers to follow Mr. Gold's recommendations. The Board is expected to adopt the recommendations at the next meeting.

Mr. Parrott indicated that he had noted that Phase Two shows zero setback to wetlands #1 and asked if that was what was likely to be required. Ms. Stohl responded that Mr. Gold has assessed as individual wetlands and there is a whole range developed. The wetland #1 as shown on the plan presented that evening is zero to the wetland and 50 feet to the right. That is likely what will be adopted by their Board.

Mr. Jousse then asked what the phase two building extension was going to be used for and Mr. Briand indicated it would be to expand production if necessary and possibly the office area. When Mr. Jousse wondered why they were not building to the size that they think they will need, he indicated the newspaper is looking in that direction but perhaps twenty years down the road. In response to a question from Mr. Berg, Mr. Briand indicated that the original Portsmouth building was built in 1986 and they had been downtown since then.

Michael Donahue from Seacoast Newspapers then reviewed the ways in which they meet the five factors of the Pease standard for evaluating variances, which are similar to the area standard used in Portsmouth.

- There will be no adverse effect or diminution in the value of surrounding properties. He made reference to photographs of neighboring properties essentially equivalent to their site and constructed with the same 40 foot setback they are requesting. He positively compared their building in attractiveness and location of parking, stating it would be a positive addition.
- It will not be detrimental to the public interest to preserve existing jobs in the community. They are making a twenty-one million dollar investment and are going to look ahead more than fifteen years in contributing to the community.
- Denial would result in hardship to the person seeking it. There is a unique hardship in that the land includes wetlands which drives development to the front. They're not seeking anything excessive and have gone to significant effort to tailor the construction to the uniqueness of the site. He also pointed out that they are dealing with an 80 foot right of way. The normal reasons Boards are

concerned is the location of the structure as it relates to the right of way because there is always a potential for widening the right of way. In this instance, the right of way is 80 feet and the roadway is centered essentially in the right of way. The roadway could be doubled and more and yet still leave room in the right of way on their side for sidewalk or grass area.

- Substantial justice would be done in that, after an exhaustive year and a half consideration of alternate sites where their activity might not be wanted in proximity to residential neighborhoods, they felt that Pease was the right place for this operation.
- Granting would be in the spirit of the ordinance, with no negative effect on New Hampshire Avenue and the planning of the building and docks indicates their intent to comply with the spirit. Their landscaping will have further review with the Planning Board.

Mr. Parrott asked how much work had been put in to try and comply with the 70 foot setback and Mr. Hogan responded for the petitioners, stating that they went through 15 reworks to make it narrower and more in compliance and, with each, the newspaper life became more difficult. They can't make any more narrow and still have it usable.

**SPEAKING IN OPPOSITION TO THE PETITION, OR
SPEAKING TO, FOR OR AGAINST THE PETITION:**

With no one rising, the public hearing was closed.

DECISION OF THE BOARD:

Mr. Steven Berg made a motion that granting the variance as presented and advertised be recommended to the Board of Directors of the Pease Development Authority. The motion was seconded by Mr. Arthur Parrott.

In considering the motion, it was decided to apply the criteria of the Portsmouth Zoning Ordinance.

Mr. Berg noted that the petitioners had hired experts to design a building that works and if the experts say that it must be this way, it should be accepted. The location and configuration of the wetlands present a hardship and it is relevant that other buildings exist with the same proposed setback. He also noted that this is where three zoning districts come together.

With specific reference to the *Boccia* analysis used in the Portsmouth zoning ordinance, the following reasons were considered in making the recommendation:

- The design is well thought out and will not be contrary to the public interest or diminish the value of surrounding properties.
- Literal enforcement of the ordinance would result in a hardship due to special conditions of the property, which is at the confluence of three zoning districts. Additional problems are created by the wetlands to the side and back.
- There was expert testimony to the fact that all alternatives were considered and, with the problems inherent in the site, this was the most reasonably feasible design.
- Substantial justice would be done as the applicant met with the city to develop a proposal which requires the minimum relief.

The Board voted unanimously to recommend to the Pease Development Authority Board of Directors that the petition be granted as presented and advertised.

10) Petition of **Anthony J Balakier and Cherie L. Geiger, owners**, for property located at **490 Islington Street** wherein a Variance from Article XII, Section 10-1201(A)(2) is requested to allow a 15' wide travel aisle where a 24' wide travel aisle is required in conjunction with the addition of two dwelling units. Said property is shown on Assessor Plan 156 as Lot 1 and lies within the Mixed Residential Business district. Case # 4-10

SPEAKING IN FAVOR OF THE PETITION:

Attorney Charles Griffin identified himself as representing the petitioners and referred to a packet of material he had just placed before the Board. Mr. and Mrs. Balakier wish to build a 45x28 foot addition to the property, consisting of two townhouse type residential units, three stories each, with parking on the ground level and three garages. The existing commercial building will be demolished and the existing residential units will also be converted to townhouses for a total of four dwellings. In the past the property contained a plumbing and heating store with two residential units and Attorney Griffin referred to photographs in the packet showing current condition of the site.

Attorney Griffin made the following points:

- With an approximately \$350,000 planned investment, there will be an upgrade rather than a diminution in value of surrounding properties. The dominant use in the neighborhood is multi-family and this will be consistent with that use.
- Three of the proposed parking spaces consist of garages and the visibility of those vehicles will be minimized. There will also be landscaping installed along the rear, southerly sideline where the parking spaces are located as well as along the westerly sideline. Currently none exists.
- Granting the variance will be in the public interest, satisfying a need for reasonably priced housing. The improvements will increase assessed value and tax revenues.
- The variance would satisfy the intent and spirit of the ordinance as the less intense use conforms to the existing neighborhood and the commercial use will be eliminated. The property will comply with the setbacks for the Mixed Residential B zone, where currently it does not. The open space and lot coverage requirements will also be met. Presently entry to the property can be made from both Islington and Columbia Streets. This proposal would eliminate the Islington Street access and all traffic will enter and exit via Columbia Street, resulting in a safer situation.
- Although not complying with the aisle requirements of the ordinance, the parking layout will satisfy the provisions of Section 10-1201(a) 3&4, which state that each parking space must be designed so that any motor vehicle may proceed to and from a parking space without requiring the moving of any other vehicle or passing through a parking space, and will also allow vehicles to exit to Columbia in a forward fashion. In addition my client will agree to an abutters request for some fencing and curbing.
- Denial of the variance would result in unnecessary hardship. An area variance is necessary to permit the reasonable use of the property given special conditions of the property. The proposed use and number of parking spaces meet requirements. There are special conditions in that the lot itself is irregularly shaped, which dimensions Attorney Griffin outlined. If the property had the same depth of 75 feet along Columbia Street that it has on the other side of the property, they would be able to pick up an additional 9 feet and provide the 24 foot wide aisle with respect to this part of the property. The need for the variance for the parking aisle also arises from the fact that the rear property line of the remaining building is located so that there is simply not 24 feet of distance between the building and the rear property line. In an effort to explore alternatives and reduce the amount of requested relief, they would now remove the rear deck, resulting in an aisle width of 19 feet, sufficient to allow two vehicles to pass side by side.

Attorney Griffin then addressed the departmental memo in which it was stated that in 2001, the lot previously received a variance for 6 parking spaces where seven were required. There's also a variance for a 0' front yard and 1' rear yard in connection with that parking. They will not be adding any new spaces, just arranging the location of the spaces approved in 2001. He added that, since the use is residential, it will not generate a lot of traffic. The users will be owners and occupants, not the general public, so the site can safely accommodate these parking spaces with less than the requisite aisle width. Attorney Griffin also maintained that the granting of the variance will not result in overdevelopment of the site.

He also addressed the point that the number of dwelling units needs to be decreased, thus decreasing the number of parking spaces. He referred the Board to a court decision in the case of *Vigeant vs. the town of Hudson* in February 23, 2005 where the New Hampshire Supreme Court ruled that, "when an area variance is sought, the proposed project is presumed to be reasonable if it is a permitted use of the town's applicable zoning ordinance. In the case before us, it is permissible for the plaintiff to build five units of multi-family housing on his property" Attorney Griffin quoted further from the decision, "it was a permitted use and was most appropriate for the neighborhood...If the use is allowed, an area variance may not be denied unless the ZBA disagrees with the proposed use of the property. Given that the proposed use is permitted and thus presumed to be reasonable, the issue is whether the plaintiff has shown that, in order to build five multi-family dwelling units, it is necessary to obtain a setback variance given the property's unique setting in its environment."

Attorney Griffin stated that on the second factor of *Boccia*, the Court stated that "there must be no reasonable way for the applicant to achieve what has been determined to be a reasonable use without a variance." The Court went on to say that in the context of an area variance, the question of whether the property can be use differently from what the applicant had proposed is not material and then proceeded to cite the *Boccia* case. The Court concluded by saying "there is no reasonable way for the plaintiff to achieve the permitted use without a variance. From a practical standpoint, an area variance is necessary." He stated that that rationale applies equally to this case. The variance is necessary to implement the proposed plan; the use is permitted; the number of units is permitted; and he does not believe it is reasonable to deny this request because the department (Planning) disagrees with the number of units being proposed.

Finally, he stated the variance would result in substantial justice. There is no gain to public in keeping the property as is that outweighs the benefit to applicant to develop the property in a fashion that will make its use conform to the dominant use in the neighborhood. The Board has granted similar relief to properties in past and the Balakiers are only asking to do what the ordinance allows them to do and what others in the neighborhood have done. He stated, in conclusion that he believes they have presented evidence that the five points necessary to grant the petition are met. He stated that Mr. Balakier was present, along with Mr. Thane Pearson, the architect to answer any questions.

Chairman LeBlanc asked a question relating to the fence that runs along the back side of the property, noting that in the drawing it showed some stepped demarcation. He asked if that was where the fence could go, or along the property line. Attorney Griffin said it was his understanding that Mr. Bergeron would like to see the fence go along the property line and that's where Mr. Balakier has said he would replace it. He wants a stockade fence where parking would be and then some other kind of fencing from that point out to Columbia Street. Attorney Griffin also responded affirmatively to Chairman LeBlanc's question as to whether the driveway coming into the property is shown as a dashed line from Columbia Street and indicated that is where they would achieve the 19 feet once they take down the deck.

Chairman LeBlanc asked what the travel area at the corner of the building and Mr. Thane Pearson, the architect, indicated it was shown as 15 feet which could be reduced by cutting back on plantings. Mr.

Arthur Parrott noted that the plan was supposed to have dimensions and requested that Mr. Pearson dimension for the Board the three parking spaces that are along the rear of the property line where the plan indicates a setback of 15 feet. Mr. Pearson indicated 8 and a half feet wide by eighteen feet. In response to a comment that the city standard is nineteen feet, he indicated that they were open at the back and could be nineteen. Ms. Tillman stated that they need to be or the petitioners would have to come back and Mr. Pearson said they would add a foot of paint to the space lines.

Mr. Parrott then posed a question for the department of how much space is required for backing and Ms. Tillman indicated it is 24 feet where they show 20 feet, which Mr. Parrott commented was also not up to standard. That is why the applicants are there – the narrowest point of the travelway is what was advertised. It varies in width but the narrowest width is 15 feet.

SPEAKING IN OPPOSITION TO THE PETITION:

No one rose to speak.

SPEAKING TO, FOR, OR AGAINST THE PETITION:

Mr. Robert Bergeron, identified himself as an abutter, living in the adjacent lot on Columbia Street next to where the cars would be parked. He raised the issue of where the snow would go, indicating that up at the condominiums on Columbia Street, they put the snow on the sidewalk because they've used up all the area. Attorney Griffin indicated on the plan where they will plow toward and that it will not be on Columbia Street.

With no one further speaking, the public hearing was closed.

DECISION OF THE BOARD:

Mr. Duncan MacCallum moved to deny the variance application, seconded by Mr. Parrott, as he believed the petitioners were trying to do too much. The provision in the zoning ordinance relating to travel aisles is there for a reason – to make sure there is enough room for cars to maneuver and there just isn't in this case. They're trying to overdevelop and the obvious solution is to have one or two fewer units. He saw no hardship in the lot. A foot or two difference does not make it irregularly shaped enough to make it a special condition. The site already has one variance for parking and now it would be overcrowded with too many units and parking spaces. Trying to implement a use that is permitted by the ordinance is presumed to be reasonable but the issue is not whether the use is reasonable but how much of a use. One of the underlying reasons for the portion of the ordinance in question is to ensure enough light and space between properties and a minimum width of travel lane is one way to do that. Even though they want six units, they may need another design.

Chairman LeBlanc asked if Mr. MacCallum realized the project was four units and Ms. Tillman added it was four dwelling units with one and a half parking spaces per unit, totalling six parking spaces. There was discussion among Mr. MacCallum, Chairman LeBlanc and Ms. Tillman about the specifics of the proposal, including numbers and locations of units and changes from the current structures.

Mr. MacCallum stated he had been looking partially at plans for the 625 Islington Street petition and, with Mr. Parrott's permission, requested to withdraw to review and rethink his motion to deny.

Mr. Steven Berg then moved that the petition be granted as presented and advertised, seconded by Mr. David Witham.

In making the motion, Mr. Berg felt that the petition was about the parking requirement. Without regard to that, moving the access to this property from Islington to Columbia is a good thing and creation of any parking spaces out back is a good thing. He did not see two additional units creating any more intense a situation from the current. He did not see an overcrowding issue as six cars could be just as possible with the existing structure and, while not perfect, twenty feet is wide enough to maneuver the cars and get cars off the street. It would be in the spirit of the ordinance and an improvement to the neighborhood. Substantial justice would be done by allowing an improvement to the property and allowing more residential. The hardship issue is that there is not sufficient width behind the house to begin with so any allowed parking in back, which is something we encourage, would fail to meet the necessary criteria. The only way to alleviate the hardship would be to remove the building, which is not reasonable.

Chairman LeBlanc asked if Mr. Berg would be open to a stipulation that an eight foot stockade fence be placed along the property line where the cars are parked and that there be an additional delineation between the two properties going out to Columbia Street. Mr. Berg said it was acceptable and Mr. Witham also as long as it was what was agreed upon with Mr. Bergeron.

In seconding, Mr. Witham indicated that he struggled with this one and there are some aspects he is not comfortable with, but he focused on the areas of the variance and he believes it is in the public interest and a public benefit to move the entrance and exit off Islington and bring to Columbia. It's also a public benefit to take down a structure that doesn't meet setbacks and replace it with one that does. As Mr. Berg says regarding the travel aisle, it is what it is and the building is what it is and he felt 19 feet was enough. Once you get to where the cars park, not really talking about a travel aisle – it's more a maneuvering area - there is 20 feet where 24 is required. He was pacing off similar space where he works and it was adequate. There are some constraints to the size of this lot and he believes 20 feet will work in this residential situation.

Mr. Arthur Parrott indicated that they were dealing with a small lot of 6800 sf and even though this number of units is allowed, by granting this variance to allow a narrow passageway and a substandard maneuvering area, they're almost guaranteeing problems with respect to people walking and he doesn't share the confidence that there is enough room to put snow without pushing out onto the street. Approval would be ill advised and encouraging over development, which is not in the public interest. It's simply too much development for the size of the lot and he can't support the variance.

Mr. MacCallum apologized to the petitioners and Mr. Griffin for not previously making sure he had his facts straight, but having rethought the matter, he still agrees with the concerns of the Planning Department. He also agrees with the remarks made by Mr. Parrott and his bottom line is that it is still too much intensity for the property. He maintains pretty much everything he said before in support of his withdrawn motion. Indicating he will be voting against the motion to grant, he still does not see any irregularity or hardship. Also, nobody is disputing the fact that the use is permitted, but the issue is how much you are going to burden property and whether you will still have a parking and traffic safety problem and he thinks there will be.

Chairman LeBlanc called for a vote on granting, with the stipulations that there be an 8 foot stockade fence along the property line where the cars are parked and that the properties be delineated on their way out to Columbia Street.

The Board voted to deny the petition by a vote of four to two, with Messrs. Berg and Witham voting to grant.

12) Petition of **Robert J. Bossie Revocable Trust and PK Brown, owners, and Greenway Financial LLC, applicant**, for property located at **625 Islington Street** wherein a Variance from Article XII, Section 10-1201(A)(2) is requested to allow allow a 20' wide travel aisle where a 24' wide travel aisle is required in conjunction with the conversion of an existing building with 2,000 sf of warehouse space, 1354 sf of retail space and 4 apartments to 3,200 sf of retail space and 6 apartments. Said property is shown on Assessor Plan 164 as Lot 6 and lies within the Business district. Case # 4-12

Attorney Charles Griffin identified himself as representing the petitioners and passed out some additional exhibits. He described the features of the project and, as justification for the variance, made the following points:

- There will be no diminution in value of surrounding properties. Greenway Financial recently completed renovations on another project which he presented as an indication of the type of work they do. He also referred to the exhibit showing what the front of this building will look like, upgrading the entire and enhancing property values. They will gut the interior, spending over \$300,000 in improvements. The former warehouse will be converted into retail space plus two garages for parking for the two additional apartments. In describing the project, he noted as additional improvements that the first floor will become handicapped accessible; a handicapped parking space and assistance area will be added; and landscaping will be provided.
- He stated that it is in the public interest as this upgrade will increase assessed valuation and tax value. Two handicapped accessible apartments will address the need for housing.
- This will not result in overcrowding or change the footprint. The property lies in the business zone, meets frontage, depth and coverage requirements of the ordinance and will be subject to the site review process. While not complying with the aisle requirement, the parking layout will satisfy the other requirements of the ordinance and will not require the moving of any other vehicle as in the existing situation.
- Special conditions resulting in a hardship with a variance needed to enable the applicant's proposed use. Attorney Griffin indicated another plan showing that the property has 120 feet of frontage but only 100 feet at the rear. In addition, the building is irregularly shaped and the need for the variance arises because there is not enough distance from rear of the building and the rear property line to allow the 24 foot travel aisle. This situation would exist whether there were 4 or 6 apartments.
- The benefit could not be achieved by some other method. The lot is irregularly shaped and the need to provide handicapped parking and van assistance reduces space for non-handicapped. Of seventeen parking spaces, nine of them comply with the 24 foot aisle requirement. The need for a variance arises in the rear and applies to only 6 of the required spaces. They have altered existing parking which is non-conforming. By eliminating some of the spaces along the side, towards the front, that area will become compliant with the 24 foot aisle requirement and provide handicapped access. With increased residential use, they believe the parking lot use will be less intense. People

will be travelling at a lower rate of speed as this is not a through parking lot so they believe there can be some relaxation of the turning aisle requirement without endangering others.

Attorney Griffin referred to exhibit 3 in the packet, a letter from Alex Ross, a civil engineer, who estimated that 20 foot wide travelway is sufficient to accommodate passenger car vehicles in a low speed, low volume location. He noted that both The Bread Box and the CVS sites have travel aisles less than 20 feet and the use of these sites is exclusively commercial.

In considering the suggestion that the number of dwelling units be reduced to reduce the number of parking spaces, Attorney Griffin again referred to the same case he had specified previously that evening in the presentation for the 490 Islington Street petition, *Vigeant vs. the Town of Hudson*. The Supreme Court said, “We hold that it is implicit under the first factor of the Boccia test that the proposed test must be reasonable. When an area variance is sought, the proposed project is presumed to be reasonable if it is a permitted use under the town’s zoning ordinance. If the use is allowed, an area variance may not be denied unless the ZBA disagrees with the proposed use of the property. Given that the proposed use is permitted and thus presumed to be reasonable, the issue is whether the plaintiff has shown that, in order to build five multi-family dwellings, it is necessary to obtain a setback variance given the property’s unique setting in its environment.” Attorney Griffin submitted that the rationale applied to this case as well because the need for a variance arises as the project will have six apartments which are a permitted use and in order to meet the parking requirements.

- There is no other way to achieve the benefit and the applicants have attempted to explore reasonable alternatives by removing some of the parking spaces from proximity to Islington Street and by reconfiguring the parking in the rear so that it is conforming, substantially improving the situation which exists. Again, in the *Vigeant* case “...the question of whether the property can be used differently from what the applicant had proposed is not material. From a practical standpoint an area variance is needed given the proposed plan.” Attorney Griffin applied this reasoning also to the petition being heard.
- In terms of substantial justice, the lack of adequate aisle width is a pre-existing condition. They will be putting two more vehicles in the site which are going to be garaged. The benefit to the public is outweighed by the applicants need to develop the property. The project would not be economically viable with only 4 apartments instead of 6. In conclusion, Attorney Griffin stated that they believe they have satisfied the five criteria.

In answer to questions from the Board, Attorney Griffin stated that the only item at issue is the 20 foot travel aisle at the rear, affecting only spots 9 through 13, with 14 and 15 garaged. The footprint will not be increased and nine spots are dedicated to the residential portion. He did not know if these were designated as such, but a stipulation could be added that they be so designated. The space now shown as garage space was formerly warehouse space.

**SPEAKING IN OPPOSITION TO THE PETITION; OR
SPEAKING TO, FOR OR AGAINST THE PETITION:**

With no one rising, the public hearing was closed.

DECISION OF THE BOARD:

Mr. David Witham moved to grant the petition as presented and advertised, seconded by Mr. Steven Berg.

In making the motion, Mr. Witham stated that, as opposed to the previous one where there were aspects that he wasn't comfortable with, there were aspects of this one that he liked a lot and he felt it would be a real plus for that part of Islington Street. He stated that he didn't feel it would be contrary to the public interest. The variance is in place as a safety factor and having a handful of spots that don't meet the 24 foot maneuvering aisle requirement isn't going to be against the public interest. He felt that cars can back out safely in a 20 foot distance and that Attorney Griffin made a good point in that this isn't a through lot. Speed is obviously going to be slower and the rear spots will most likely be used by the residents rather than retail users.

The special conditions of the property are that the way the building presently exists and with the depth of the lot, once they meet the required dimensions of the parking spots, they are left with only 20 feet requiring a variance. This petition differs from the previous one heard earlier in the evening because the maneuvering aisle where they back up is limited by the position of the building and the lot line. He didn't feel it was reasonably feasible to expect them to cut off four feet of the building to meet the 24 foot requirement.

Mr. Witham added that the variance will be consistent with the spirit of the ordinance. Safety concerns are still answered with a 20 foot maneuvering aisle especially considering that this is not a through lot. He believes that substantial justice is done to let them use this area of their lot and there really isn't much else they could do with it. They would have to reduce the density of the building quite a bit to eliminate seven parking spots and that would not be justice to the property owner. No diminution of property values will occur because of this aisle width variance and overall as a project he thought this improvement would help the value of surrounding properties.

In seconding, Mr. Berg agreed with Mr. Witham's comments with a minor correction. There is no request here for any relief from a maneuvering aisle requirement. It's all about travel aisles. The important thing here is that there is nothing preventing the owner of the property from laying out his site this way. It could be used this way right now. At issue here is whether in this layout all 17 spaces could actually be called parking spaces. Something in the zoning has tripped a trigger which says you have to have 17 legally conforming parking spaces.

Mr. Berg added that this is an existing property with specific features. There is plenty of parking there for an urban setting, but is four feet shy in the aisle. The Board has a statement from an engineer who viewed the plan and indicated that width is a variable relative to speed and this is a very low speed location so I see no harm whatsoever in allowing the formalization.

Mr. Witham clarified that he had been using "travel aisle" to use the driveway to get to the parking and, once in the parking area, he thinks of it as a maneuvering aisle.

Mr. Jousse indicated he will support the motion. Even if the applicant removed two units, it would only remove 3 parking spaces and there would still be the problem with the 24 foot requirement. He doesn't think it is overintensification of the property.

Mr. Duncan MacCallum indicated he would support as it was different from the last one. He visited both sites and this parking area is vastly bigger than the other petition where a travel aisle was an issue.

Also the parking is tucked away at the back and is the last area where people will park. He noted that the footprint was not going to be enlarged.

Chairman LeBlanc noted that there's a huge difference between this application and the one that preceded it. Here the spaces are clearly delineated. In the last one there was some vagueness about the size of the parking spaces against the fence. Here there's clearly nineteen feet in each of those parking spaces and there's also a good ten foot wider section at the back of the property for snow storage.

The Board voted unanimously to grant the petition as presented and advertised.

It was moved and approved by voice vote to suspend the ten o'clock rule.

A) Amend Section V(1) of the Board of Adjustment Rules and Regulations.

The Board took up consideration of the item continued from earlier in the evening. Chairman LeBlanc stated that what the Board is being asked to do that evening is take out a fee schedule in Section V(1) of the Board of Adjustment Rules and Regulations. The fee schedule would now simply say, "*All application fees for appeals for a Variance or a Special Exception are set by the City Council. No application fee will be charged for an Appeal from an Administrative Decision.*" Ms. Tillman stated that the City Council already reviews fees yearly so it seems better to refer to what they approve yearly rather than having to update the Rules and Regulations every year.

Mr. Berg moved that the change be adopted, seconded by Mr. Arthur Parrott.

Mr. Witham asked if other changes could be considered and Ms. Tillman indicated they could be reviewed, but probably not acted upon that evening without legal review. The change does not have to go before the Council. Mr. Witham indicated that there were other changes he would like to propose for review. These include the following:

- Section II, Time and Date – He thought the ten o'clock rule should be mentioned. He thought the public was surprised when they invoke the rule and we should just say the meeting goes to ten.. (Mr. Berg interjected, unless a majority of the members decide to extend it?).
- In Section IV, part 5, it states the "Minimum requirements for adequate plans shall include..."
- He would change this to "minimum requirements for adequate **site** plans..." because these are all pertinent to site plans rather than floor plans. Under this section also, it lists "yard dimensions" and he asked if that meant setbacks and Ms. Tillman said, "yes." He proposed that say "setbacks for proposed and existing structures." People could misunderstand "yard dimensions."

He stated that two other pieces of information he would like to see part of the requirements would be a copy of the city tax map showing the surrounding neighborhood as he finds that very helpful. Ms. Tillman and some members of the Board referred to the book with all the maps included, stating that was its purpose.

Another item he would like is a photo or photos of the site, stating the HDC also gets these. Chairman LeBlanc responded that he gets out before the meeting and takes photos. Mr. Witham also wondered if applicants were given a list of criteria to which Ms. Tillman responded affirmatively.

Chairman LeBlanc thought that under VII,4, the sub-section (c) could be eliminated where it states the Vice-Chair shall act in the Chair's absence. He thought that was stated elsewhere, but Ms. Tillman

said it needed to be restated in the Rules. She added that the department would review the changes and come back to the Board.

By unanimous voice vote, the Board voted to adopt the proposed change to the Rules and Regulations.

II. ADJOURNMENT

The motion was made, seconded and passed to adjourn the meeting at 10:05 p.m.

Respectfully submitted,

Mary E. Koepenick
Secretary