

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

7:00 p.m.

CITY COUNCIL CHAMBERS

**May 17, 2005
Reconvened on
May 24, 2005**

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

MEMBERS EXCUSED: None

ALSO PRESENT: Lucy Tillman

I. OLD BUSINESS

A) Request for Extension of Time to meet stipulation in the Petition of **Patrick H. McCartney, owner**, for property located at **120 Kane Street** wherein a Variance from Article III, Section 10-302(A) was granted with stipulation to allow an 8' x 10' shed with 35.3% building coverage where 25% is the maximum allowed. Said property is shown on Assessor Plan 142 as Lot 14 and lies within the General Residence A district.

It was moved by Mr. MacCallum, seconded by Mr. Parrott, and passed unanimously that an extension of time to August 1, 2005 be granted to allow for tearing down the existing barn, as stipulated in the granting of the variance on December 21, 2004. Messrs. Jousse and Marchewka stepped down for the hearing and vote on this request.

B) Motion for Rehearing, by counsel for the applicants, of the 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.

It was moved by Mr. Jousse, seconded by Mr. Parrott and passed unanimously to deny the request as no new information had been presented which was not available at the time of the original hearing and no error had been made in the application of the law.

C) Petition of **Jeffrey F. and Deborah S. Purtell, owners**, for property located at **31 Pleasant Point Drive** wherein a Variance from Article III, Section 10-302(A) is requested to allow the following after demolition of the existing single family dwelling: a) a 26' x 56' 10" two story single family dwelling with a 25.3'± front yard where 30' is the minimum required, a right side yard less than 10' where 10' is the minimum required; and , rear yard less than 30' where 30' is the minimum required, b) an attached 326 sf front porch with a 6.1± right side yard where 10' is the minimum required, c) a 12' x 16' one story rear addition with an 10'± rear yard where 30'

is the minimum required; and, d) a 24' x 26' garage and connector (720 sf) with living space above creating 23.7% building coverage where 20% is the maximum allowed. Said property is shown on Assessor Plan 207 as Lot 27 and lies within the Single Residence B district.

SPEAKING IN FAVOR OF THE PETITION

Attorney W. Pelech represented the petitioner who had been granted a variance in November of 2004 for basically the same structure as the current petition, but built on the existing foundation after removal of the dwelling. Between November and now there has been a lot of rain and it was discovered that the existing basement and foundation leaked and was structurally unsound in some areas. The applicant is back before the Board to seek the same variance plus replacing the entire foundation.

Attorney Pelech stated that the variance would meet the requirements of the Boccia analysis, outlining the following points:

- The variance is needed to enable the proposed use of the property given the special conditions of the property, one of which is that this is an irregularly shaped lot. Although it looked like there was a close encroachment on the side yard to Boyan Place, we submitted photographs that show the edge of right of way is 8-10 feet from the edge of pavement. The proposed addition on the right hand side, while six feet one inch from the property line, is actually sixteen feet from Boyan Place. The Board in November found special conditions inherent in the lot which required a variance to be granted.
- It was also determined by the Board in November that the benefit sought by the applicant cannot be achieved by some other reasonably feasible method other than an area variance.
- The variance would be consistent with spirit of ordinance given the fact that, although the property line may be in one location, the edge of pavement is nowhere near the line and there is vast green space in between.
- It would not be contrary to the public interest because construction of a more code compliant and valuable structure will increase the tax base with no additional demand on municipal services.
- The value of surrounding properties will, if anything, be enhanced.
- Substantial justice will be done by allowing problems with the existing basement to be corrected, making a more safe and secure dwelling unit. The hardship to the applicant is not outweighed by any benefit to the public and the only reason we are back here before the Board is because you cannot amend a granted variance.

Mr. Jousse questioned whether the applicant had tried to relocate the dwelling within the setbacks now that they were looking at a new foundation. In his opinion, the fact that the dwelling would be constructed on the existing foundation had a lot to do with the granting of the previous variance.

Attorney Pelech responded that there's only one portion of the dwelling that is not within the setbacks. The rear porch is not conforming now and if they tried to turn the building, it still would not fit within setbacks. The building could not be relocated without changing it substantially.

In response to a question from Mr. Berg regarding why the foundation could not be repaired rather than rebuilt, Attorney stated that several individuals examined the various cracks and it was their opinion that it was not prudent to repair, rather than replace, due to structural problems.

With no one speaking in opposition to the petition, or to, for or against, Chairman LeBlanc closed the public hearing.

DECISION OF THE BOARD

Mr. Witham moved to grant the petition as presented and advertised, seconded by Mr. Marchewka. Using the *Boccia* analysis, the following reasons were cited:

- The safer structure which the new foundation will allow will not be contrary to the public interest.
- The unique shape of the corner lot, the lack of a rear setback, and the excavation which is already done for the current structurally unsound foundation are special conditions which require a variance to enable the proposed use.
- There is no other reasonably feasible alternative to pursue other than a complete new excavation, which could disturb septic and leach field systems.
- The petition is consistent with the spirit of the ordinance and substantial justice is achieved by allowing a structure to be built on the existing footprint with the only new encroachment being a section of open porch not affecting light and air.
- The value of surrounding properties will not be diminished by an attractive structure, and no neighbor has appeared in opposition to the proposal.

Mr. Jousse stated he would not support as he felt the biggest factor when the Board previously approved was that the dwelling was going to be placed on the existing foundation. He felt a building similar to that proposed could be placed within the setbacks of the property.

The motion to grant was passed by a vote of five to two, with Mr. Jousse and Mr. Parrott voting against the petition. The motion was granted with the stipulation that the porch not be enclosed other than with screening.

D) Petition of **K & S Energy Group Inc., owner**, for property located at **1400 Lafayette Road** wherein Variances from Article III, Section 10-304(A) and Article IV, Section 10-401(A)(2)(c) are requested to construct a 10' x 48' one story addition to the rear of the existing convenience store with: a) a 30' rear yard where 50' is the minimum required, b) an 11' left side yard where 30' is the minimum required; and, c) a 15' right side yard where 30' is the minimum required. Said property is shown on Assessor Plan 252 as Lot 7 and lies within the General Business district.

SPEAKING IN FAVOR OF THE PETITION:

Attorney Pelech appeared on behalf of the principals of K&S Energy Inc. who were also in attendance. He described the property as a very small lot surrounded by the former Yokens property and that the board had previously granted a special exception in May of 1995 to allow a drive-through in the rear. The applicants are seeking a variance for the following reasons: (1) The structure is so small it does not meet ADA (American With Disabilities Act) requirements as there is not sufficient wheelchair turning radius inside the building; (2) They cannot receive a New Hampshire liquor license because the size of the structure does not allow for enough product to meet requirements and, (3) The first two points result in severe financial hardship.

He stated that what is being proposed is an addition in back, almost doubling the size and allowing them to configure it on the interior to meet ADA requirements for wheelchair aisles They are asking for a 10' x 48'

addition to an existing 12' x 48' existing pre-fab building. He stated that the application does meet the *Boccia* standard, citing the following points:

- When the Board looks at the plan, they will see special conditions which make granting a variance necessary. This is a minuscule lot, made smaller by a lot line adjustment which made Yokens bigger. The size of the lot cannot be expanded and another special condition is its location on the corner. The existing entrance is one way in from Lafayette Road and one way out onto Peverly Hill Road. There are three existing parking spaces, with three more proposed.
- The benefit sought cannot be achieved by some other method reasonably feasible, and there will still be adequate green space between the building and whatever goes into the old Yokens.
- It's in the public interest to make a structure that is handicapped accessible and in compliance with the Americans with Disabilities Act. It is accessible to the front door now, but beyond that is not in compliance. It's still a commercial lot that has a business upon it, albeit not a thriving business. The business does serve a need for the general public.
- Granting a variance will not diminish surrounding properties. If you look at what surrounds the property, this expansion which is only to the rear, will not affect values.
- The spirit of the ordinance is not to overly impact surrounding properties or encroach onto side lines. Relief being requested is minimal given the fact that the area behind the building – a 30 foot rear yard where 50 feet is required - is an accessway into the former Yokens. Whether there's 50 feet there or 30 is inconsequential. It's not a matter of putting this building too close to another building. The property sits in the middle of an asphalt sea and they don't anticipate anything constructed that will come close to this structure.
- Substantial justice would be done by allowing this business owner and property owner to make a reasonable use of his property and to try to alleviate the problems arising from a structure which is not in compliance with the Americans with Disabilities Act. The hardship on the owner if the variance is denied is not outweighed by any benefit to the general public.

Chairman LeBlanc noted that on the submitted plan there's the left property line and then there's a drawing that goes outside of that and asked what this drawing was. Attorney Pelech responded that the left property line is actually the edge of pavement on Peverly Hill Road, adding that the plan is a tracing from a previously engineered plan.

Chairman LeBlanc then asked for anyone else speaking in favor.

Mr. Ingall Blanchett identified himself as an employee at the station and outlined improvements made by the new owners. He stated customers come and request items which they don't carry because they don't have the room. He stated that he did not feel a 10 foot addition would hurt anyone and without it, the owner would be out of business.

Mr. Joseph Cunningham identified himself as a local resident and representative of an insurance agency covering the property. He stated that they made recommendations and the work was done promptly and right. The facility is much more functional and the agency had no concerns.

SPEAKING IN OPPOSITION TO THE PETITION

No one responded.

SPEAKING TO, FOR OR AGAINST THE PETITION

Mr. Kevin McCloud identified himself as one of the abutters. He had intended to speak against this proposal, but in looking at the plan and seeing the side setbacks pretty much the same and the back decreased by only 10 feet, he felt that this was a tough piece of property to work anything with. By changing entrance, they're creating 3 new parking spaces, which is actually an enhancement as, when he owned the property next door, some employees parked on green space out back. The only question he had for the applicant was whether restrooms were available.

When Attorney Pelech responded that there were two now, Mr. McCloud stated he then had no opposition.

DECISION OF THE BOARD:

Mr. Parrott made a motion, seconded by Mr. Marchewka, that the variance be approved with a stipulation that an engineered plan will be provided to the City so that current boundaries can be delineated. After some further discussion, Mr. Parrott amended his motion, approved by the seconding member, to add another stipulation that the building will be brought into compliance with the requirements of the Americans with Disabilities Act.

In making his motion, Mr. Parrott noted the following:

- The variance will not be contrary to the public interest as the lot is in a commercial setting and the provided services are a well established combination of gas and light groceries. Convenience is the key here.
- The location, small size and odd shape of the lot are special conditions requiring a variance to enable the proposed use.
- The lot is fully developed and there is no reasonably feasible alternative to expansion of the store as proposed. Going straight back is not going to impinge on anyone else.
- It is consistent with the spirit of the ordinance to promote and help small businesses to prosper.
- Substantial justice would be done by allowing the applicant to be more competitive and fully comply with the requirements of the Americans with Disabilities Act.
- A more modern and functional operation at this location will not diminish the value of surrounding properties.

Mr. Marchewka added that request is not unreasonable and won't change the character of this neighborhood. This is really a modernization of this store and a natural progression of this business at this site.

Mr. Jousse mentioned that he had been inclined not to grant, but the fact that the owners were going to make the business compliant with the Americans with Disabilities Act changed his mind.

Mr. Witham indicated he would not be supporting although he understands the ADA issue. His major concern was that it is a dangerous location in which to expand the use and create more traffic. Three new parking spaces in the front could be dangerous. Although he appreciated the effort the business was making, he did not think the traffic situation was in the public interest.

Chairman LeBlanc requested another stipulation regarding ADA compliance, which Mr. Parrott added to his motion.

The motion to grant the variance passed by a vote of 6 to 1 with the stipulations that an engineered plan will be provided to the City so that current boundaries can be delineated and that the building will be brought into compliance with the requirements of the Americans with Disabilities Act. Mr. Witham voted against the motion.

E) 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 **200 International Group, applicant**, for property located at **200 International Drive** wherein a Variance from the Pease Development Authority Zoning Ordinance Section 303.4 is requested to allow an educational use (Seacoast Career Schools) in an existing building occupying 14,869± sf where such use is not allowed. Said property is shown on Assessor Plan 312 as Lot 7 and lies within the Industrial district.

SPEAKING IN FAVOR OF THE PETITION:

Attorney Pelech represented the applicant. He drew the Board's attention to a plan he was exhibiting and indicated that this property is one of the white buildings seen on International drive across the street from the Pease Development Authority office. The buildings were designed as flex use buildings where they have light industry but where they also have the ability to have business offices, which are an allowed use under the Pease zoning ordinance. What is being proposed is a career school. Seacoast Career Schools operate several schools in New Hampshire and throughout New England. What they are proposing to run at this location is a professional medical assistants program, a massage therapy program and also a technical division which would include an HVAC school.

Attorney Pelech mentioned that UNH already has a school in the building. For whatever reason, the Pease Ordinance when it was written did not allow educational uses in this zone. He pointed out that he has appeared before the Board on three separate occasions and, in each case, the Board has recommended variances. Business offices are allowed in this district and the majority of this portion of the building are business offices. He stated that the proposed use was a good fit for the location because the health claim specialist/medical assistant training programs would be in close proximity to other business uses and UNH, while the HVAC and more technical programs would be in the industrial portion.

Stating that this is a use variance, Attorney Pelech outlined the following reasons that the Simplex criteria were met:

- The zoning restriction interferes with the reasonable use of the property because of the type of uses which are allowed there now. For whatever reason, educational uses were omitted, but business offices and light industrial are allowed. When you get something like a career school which trains not only in the technical trades but also in the administrative/clerical area, it doesn't fit really anywhere and this is an ideal fit for it.
- They believe there is no fair and substantial relationship between the purposes of the Pease Ordinance and the specific property, nor would the variance injure the public or private rights of others.
- The use will not diminish property values. The surrounding properties are all part of the same 200 International holdings and is consistent with other uses in the area and is all within the building.

- It will not be contrary to the spirit and intent of the ordinance as it is not a situation where you're putting incompatible uses in close proximity to one another. In fact what the applicant is attempting to do is put compatible uses adjacent to one another.
- They believe substantial justice will be done and the hardship on the applicant is not outweighed by some benefit to the general public. In fact, they will provide a service by training medical assistants and other types of employees in demand in this area.

In conclusion, he hoped that the Board would make a favorable recommendation as they have on two or three previous occasions with regard to educational facilities in this district.

SPEAKING IN OPPOSITION TO THE PETITION, AND SPEAKING TO, FOR, OR AGAINST THE PETITION

With no one responding, Chairman LeBlanc declared the public hearing closed.

DECISION OF THE BOARD

Mr. Jousse moved to recommend the granting of the petition as advertised and presented, which was seconded by Mr. MacCallum. He stated that the variance would not be contrary to the public interest or cause injury to the public or private rights of others. The zoning restriction interferes with the reasonable use of the property as there are two other educational facilities in Pease. The granting of the variance would be consistent with the spirit of the ordinance and substantial justice would be done. The value of surrounding properties would not be affected because the landlord owns the rest of the property.

The Board voted unanimously to recommend that the granting of the variance as presented and advertised be recommended to the Directors of the Pease Development Authority.

I. PUBLIC HEARINGS.

Chairman LeBlanc noted that Petitions #7 and #16 had been withdrawn.

8) 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 **NH Avenue Retail Center LLC, applicant**, for property located at **30 Manchester Square** wherein the following are requested from the Pease Development Authority Zoning Ordinance: a) a Variance from Section 306.01(d) to allow 530.9 sf of aggregate signage where 200 sf is the maximum allowed, and 2) a Variance from Section 306.04(c) to allow light source to be visible above 3'. Said property is shown on Assessor Plan 302 as Lot 4 and lies within the Industrial district

SPEAKING IN FAVOR OF THE PETITION

Attorney Pelech appeared on behalf of 2 International LLC who are the tenants of the Pease Development Authority at Manchester Square, the one and only retail property at Pease. That's probably the only reason we're here on a sign variance application. This is a first for Pease. In fact, when they designed the Pease zoning ordinance, they did not anticipate retail uses so there is no provision for signage as we would have in our Portsmouth ordinance for a similar multi-use shopping center.

He described Manchester Square as the convenience location for retail in that area, with a bank, a barber shop, a pizza place, dry cleaning, a phone center, and other services. He drew attention to a plan he had brought noting that these small retail spaces, most less than 2,000 s.f., have storefronts which front on two sides of building as well as the front of the building. The building is an existing Portsmouth Regional Hospital/HCA medical building which is part of this application because this is a master signage plan which was submitted and approved by the PDA Board of Directors.

Attorney Pelech made reference to a memorandum in the Board packets from Maria Stowell, the Manager of Engineering. This lists the type of signage being proposed and the basis for her favorable recommendation. She states "I believe that in this instance the request for variances are well founded. PDA signage requirements as established in the land use controls do not appear to have contemplated this type of retail development. In contrast, Portsmouth's zoning ordinance which specifically provides for multi-use shopping centers, would seem to allow the NHRC's request. Further complicating the request, the sub-lessee at 26 Manchester Square- HCA- has previously been authorized to install a free standing street sign on lot 14, which is the NHRC premises to identify the tenants occupying its facility." Attorney Pelech added that Pease never contemplated retail uses and that is the reason for the second variance request. All they allow are monument signs on business use buildings. This is why they only included signs with lights not above 3 feet, and this doesn't work for retail.

Making reference to the packet and passing out additional photographs, Attorney Pelech outlined the proposed signage which he maintains will be much less than what would be allowed in Portsmouth for a similar size center. He made the following points with respect to the variance analysis:

- There are special conditions requiring a variance, which are the corner lot, multiple buildings and multiple accessways requiring signage.
- The zoning restriction interferes with the intended use of the property because the signage would be inadequate for the use..
- The variances won't diminish surrounding properties. The buildings are beautiful, but needed a facelift and this retail center provides it.
- Substantial justice is done as this whole project is one that employees at Pease have been asking for. It is in the public interest and not contrary to the spirit of the ordinance to allow sufficient signage to identify these businesses.

Chairman LeBlanc asked for anyone else speaking in favor of the petition, speaking in opposition to the petition, or speaking to, for or against. With no response to any request, the public hearing was closed.

DECISION OF THE BOARD

Mr. Jousse made a motion, seconded by Mr. Marchewka, that a recommendation to approve the petition be made to the Directors of the Pease Development Authority. He observed that everything at Pease had been done in good taste and that this would not be contrary to the public interest. He didn't see how the value of

surrounding properties would be affected by this signage. The Board had recommended approval of these various use buildings and it stands to reason that the signage that goes with them should also be approved.

In seconding, Mr. Marchewka noted that the development authority had decided to allow retail development, but had not made provision for retail signage and that’s what they would be doing that evening. He had looked at the request and, in a similar situation in the City, he believed the Board would allow this type and amount of signage.

The Board voted, six to one, to recommend to the Directors of the Pease Development Authority that the variance be granted. Chairman LeBlanc voted against the motion.

9) Petition of **Manuel S. Garganta Revocable Trust and Donna J. Garganta Revocable Trust, owners** for property located at **471 Colonial Drive** wherein a Variance from Article IV, Section 10-402(B) is requested to allow an 8’ x 12’ shed with a 3’ left side yard where 5’ is the minimum required. Said property is shown on Assessor Plan 260 as Lot 40 and lies within the Single Residence B district.

Mr. Parrott stepped down for this petition.

SPEAKING IN FAVOR OF THE PETITION

Mr. Manuel Garganta stated he was the petitioner living at 471 Colonial Drive. He stated that he was coming before the Board to request a new shed replacing one there since 1969 which was in disrepair and no longer functional so it was torn down. He presented a letter to the Board which had been signed by a number of abutters and stated that he had contacted most abutters, including the primary ones at lots 39 and 41, and no one opposed his request. The back of the property abuts Pease conservation area so there would be no impact to them. Mr. Garganta pointed out that the shed is new as can be seen in the packet.

Mr. Jousse asked if the new shed, if granted, would be in the same place as the old. Mr. Garganta responded that it would be moved over a couple of feet as he was trying to tuck behind the tree in the site plan to break up the profile when looking at it from the street. Also, by putting it in that location, it would keep it from coming out into the center of the yard.

When Mr. Marchewka asked if that was the reason the shed would have to be three feet and not five from the property line – to tuck it behind the tree - Mr. Garganta answered “Yes,sir,” adding it would also leave some room behind it. He indicated he had showed the plan to the abutter who had no problem with it.

In response to a final question from Chairman LeBlanc, Mr. Garganta stated that the shed would be 8’4” or 8’7” with a low peak roof, as shown in the provided brochure.

With no one else rising to speak in favor or opposition to the petition, or to speak to, for or against, the public hearing was closed.

DECISION OF THE BOARD:

Mr. Marchewka moved, seconded by Mr. Nate Holloway, that the petition be granted as presented and advertised, stating that the applicant has given reasons why he’s placed the shed where it is – to be more aesthetically pleasing from street and does not interfere with the back yard. He stated that while two feet doesn’t seem like it would be an issue as far as moving the shed towards his house, it does make a difference in

enjoying your back yard and, if the neighbors don't have a problem, it's probably best to tuck it where proposed. Applying the *Boccia* analysis, the following were stated as the specific reasons for granting the variance:

- With the location of the shed tucked behind a tree, the variance will not be contrary to the public interest.
- The special conditions requiring a variance to enable the proposed use are that there would be an adverse impact on the usable yard as well as the view from the street if the shed were relocated to comply with the ordinance. The applicant wants to put the shed in an area that conceals it from the street and this is the only place.
- The applicant has explored a number of alternatives which are not reasonably feasible to pursue other than what is proposed.
- The petition is consistent with the spirit of the ordinance and substantial justice is achieved by allowing the applicant to rebuild what was there.
- The value of surrounding properties will not be diminished by an attractive new structure, and a number of neighbors have signed a petition in support of the proposal.

In seconding, Mr. Holloway added that it was commendable that he came before Board as many don't.

Mr. Witham also spoke in support stating it would be easy to say that the applicant should just move the shed three feet and not have to request a variance. Once you look at the site plan, however, the extra feet start to pinch it toward the house and restrict the circulation around the house and the flow of usable area. Those are good enough reasons and the abutters don't have problem.

By a vote of six to one, the Board voted to grant the variance as presented and advertised. Mr. Duncan MacCallum voted against the petition.

10) **Petition of 535 Peverly Hill LLC, owner and Sun Woo Park d/b/a Park's Taekwondo, applicant,** for property located at **535 Peverly Hill Road** wherein a Variance from Article IX, Section 10-908 is requested to allow a 2' x 20' sign on the front roof of the building and a 4' x 8' sign on the end wall of the building in a district where such signs are not allowed. Said property is shown on Assessor Plan 244 as Lot 9 and lies within the Single Residence B district.

SPEAKING IN FAVOR OF THE PETITION:

Mr. Jeff Noracki introduced himself and stated he was representing Mr. Park in a request to install signage on the property located at 535 Peverly Hill Road. He reminded the Board that they were in a few months ago and obtained permission to relocate the school into the former Peverly Hill Garage structure. He noted that the property has had a pretty good transformation. It's looking clean and professional and is almost complete and ready to open. There is just one problem, which is that no one knows what is because there are no signs.

Mr. Noracki referred to the signs in the Board packets and stated that, if the use were a conforming business use, they would be allowed just over 100 square feet in signage. All they are asking for is approximately 72 square feet where one sign would be a 2' x 20' mounted on the eave of the roof on top of the building. The second sign would be what currently exists at Mr. Park's Islington Street location, which they would like to put on the end wall at the new facility.

Mr. MacCallum stated that no one questions their right to have a sign for a business but he felt they were asking for a lot of signs, particularly in a residential district, and asked why it was necessary to have so much. Responding that they didn't feel they were asking for that much, Mr. Noracki stated that they felt that the signs

were in appropriate proportion to the building. The previous facility that was there had a number of signs on the building, plus a free standing one. He stated that they were not looking for a separate free standing sign but were keeping everything on the building and professional looking.

Mr. MacCallum made reference to the departmental memorandum and pointed out that, since they were in a residential district, they were not going to need that much of a sign to attract interest. They would not have to compete with the signs of other businesses for the attention of passersby..

Mr. Noracki agreed that they would not be in competition with other signs but noted that traffic is moving fast and it's hard for people to slow down and take a close look at signs, nor would it be wanted for people to slow down and be rubbernecking at signs.

Mr. MacCallum didn't feel they needed a closer look. All they really need is something sufficient to inform of the location of the business. They're in a residential district and if they weren't in this neighborhood, they wouldn't need variance, which Ms. Tillman verified was correct. He stated that the purpose of signage was not billboard advertising, but sufficient to inform people who are interested in your business as a destination of its location.

Ms. Tillman interjected that there was a copy of property record card in the file, which was being passed around, which shows what signage was on the building when they took a picture to do the property assessments for the city. She indicated she did not know when it was taken, but it had not changed much over the years.

Mr. Holloway asked if the picture of the sign which Mr. Park had scanned in and added to the plan in his packet appeared in the approximate location where it would be placed, to which Mr. Noracki said it was. It would be mounted on a bracket and fixed to the roof.

Mr. Parrott asked if he was correct in assuming that all the folks going to the school would be by pre-arrangement or will they be trying to catch people's eye as they drive down the street.

In response to a request from Mr. Noracki for clarification, Mr. Parrott asked if the people coming to this facility would be coming by prearrangement and, whether instructors, students or parents, would they be going there as a destination and have to know where it is ?

Mr. Noracki said that was correct.

Chairman LeBlanc asked how big the fascia board just under the roof was and Mr. Noracki said about 8 inches. Chairman noted that there used to be garage doors and said the property now looks very good. Mr. Noracki said that the doors had been removed and new windows and new siding installed. The property is much different from the photo on the tax card.

SPEAKING IN OPPOSITION:

Carol Ruesswick identified herself and stated she lives at 545 Peverly Hill Road. She passed out a letter from their neighbor for the Board. She stated that, as an abutter, they have done a great job in redoing the building. However, there is wiring exposed where it looks like the signs are going to be. Her first question is whether these will be lit signs? Secondly, she feels a 2'x20' sign on rooftop is quite excessive. If doing the speed limit on Peverly Hill Road, which she believes is 25 mph, you can see the school as you go by. She stated that she has a special exception for her business as a beautician and she has a very small sign as does the church down the street. She stated she is greatly opposed to it.

Wayne Ruesswick identified himself as also living at 545 Peverly Hill Road and stated that, at their location they have a sign which is about six square feet is the maximum and that is more than enough to generate interest. Most people don't think of Peverly Hill Road as a residential district, but it is and they don't necessarily need large signage along that road. They appreciate what they have done to the property but with too much signage, it starts to look like a commercial neighborhood.

Mr. Holloway asked the petitioner if they were planning on having lights.

Mr. Sun Woo Park identified himself as the petitioner and replied that the lights will be shining down from the top corner on a timer which will shut down around 10:30 or 11:00.

After various questions posed by Mr. Holloway and Chairman LeBlanc, it was determined that the school closes around 8:00 p.m. on an average and the light would be left on until 10:30 p.m. Both signs would be lit on one side by lights on the roof direct downward

With no one else speaking in opposition, or to, for or against, the public hearing was closed.

DECISION OF THE BOARD

Mr. Parrott moved, seconded by Mr. Holloway, that the petition be granted with the stipulation that the total amount of signage, to be arranged as the applicant wishes, be limited to no more than 20% of the requested 72 s.f. and be without lighting. He stated that the reason he was being so specific is that because signs are not allowed in the area, the ordinance has no guidelines. It was further clarified that this would represent 14.4 s.f. of signage, without lighting and placed below the eaves. Mr. Parrott noted that on the photo from the tax card showing the previous use, the sign was fairly small and on the front wall.

Prior to receiving a second to the motion, Mr. Witham stated that he didn't know if they were being too restrictive on lighting – that maybe it could be down lighting and limited to certain hours of operation.

Mr. Parrott responded that his reasoning is that the area is residential and there have to be stricter controls on the business end to respect the property rights of the residents.

Mr. Holloway then seconded the motion.

Mr. Parrott continued by stating that the Board is in a difficult position because they're being asked to allow something which is not allowed in the district. But, clearly, in order to operate a business which they had approved, some signage is required. We've learned that the folks coming to the facility know what they're looking for. The facility stands right out there and the speed limit is low in the neighborhood. His motion is an attempt to balance the public interest and the variance would not be contrary to that interest as long as signs are fairly small in size. Because the building stands out, the signs will be very prominent against the side and front of the building. In this case, the public interest is represented by the folks that live in the neighborhood and they don't want to be looking at large garish signs.

Continuing with the various points of the *Boccia* analysis, he added the following:

- There is no other method to pursue other than a variance as literal enforcement of the ordinance would allow no signs, presenting a hardship in the operation of this business. We have allowed the proposed use and some signage is needed.
- With the attached stipulation, the variance will be consistent with the spirit of the ordinance and substantial justice will be done as the interests and rights of all parties have been considered and balanced.

- With appropriate signage, we will come to some sort of a balance and the value of surrounding properties will not be diminished

In his seconding statement, Mr. Holloway said he agreed with the maker of the motion. He is somewhat reluctant to approve this much signage, but he will support.

Mr. Jousse said he would not support as even 14 s.f. is too large for the residential area.

By a vote of five to two, the Board voted to grant the variance with the stipulations that the total signage will be equal to, or less than, 14.4 s.f., that there will be no lighting on the signage itself and that the signage will be below the eaves of the building. Mr. Jousse and Chairman LeBlanc voted against the motion.

11) Petition of **Michael J. and Leanne A. Edwards, owners**, for property located at **64 Brackett Road** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) are requested to allow: a) a 6'6" x 18' irregular shaped front porch and stairs with a 17.7'± front yard where 30' is the minimum required, b) a 12' x 27' irregular shaped deck and stairs with an 18.1'± rear yard where 30' is the minimum required, c) a bay window extension in the kitchen addition protruding into the proposed deck within the required 30' rear yard; and, d) 31% 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.

SPEAKING IN FAVOR OF THE PETITION

Mr. Michael Edwards identified himself as one of the petitioners residing at 54 Brackett Road. He passed out photographs which provided an overview of the neighborhood and letters regarding the previous hearing of a petition. He stated that, in December of 2004, they had come to this Board requesting several variances in order to increase the living space of their very small home on a non-conforming lot. At that meeting, they had many neighbors appearing in favor of the petition. One of those neighbors expressed a concern for a lot line issue that came up during a survey that they had performed. They were then tabled to the January 18, 2005 meeting to resolve the issue.

At the January 18th meeting, they were able to show that they had resolved the lot line issue with Mr. LaCroce. After a brief second presentation, they were denied due to the written statement of Mr. Wilder objecting to the placement of the garage. Mr. Edwards stressed that in his statement, Mr. Wilder did not object to the rest of the project but only the garage's placement three feet from the property line. In the Board's decision, they said the petitioners had not sufficiently established a hardship – that by reconfiguring the interior of this project, they could achieve the benefit they sought. The project, i.e. the garage, was also denying light and air to the abutter and that, as a result, they would diminish the value of that property.

Mr. Edwards stated that he was there tonight to advise the Board that they had made the necessary adjustments. First of all, changes were made after it was made clear that the Board would not support the construction of the garage nor would they support a variance to the right side of the property. The Board was correct in its suggestion that reconfiguring the interior could accomplish the same goal. They eliminated the garage from the right of the property and adjusted the rear addition so that it complies with the setback. In place of the garage, they redesigned a modest covered side entry which sits back and meets all setback requirements. Another benefit is a reduction in the height of that structure.

Mr. Edwards went on to cite the various points of the *Boccia* analysis and how their petition meets this criteria.

Special Conditions – This property predates the ordinance and strict enforcement creates a hardship in itself. This lot is small and narrow in size limiting the expansion options. This is coupled with the hardship of a slope in the rear yard. At the last meeting of the Board in speaking to the people who wanted to add horses to their property, it was mentioned that it is the responsibility of the Board to protect the rights of the surrounding property owners and Mr. Edwards would agree with that, but on the same premise, would argue that it also is their responsibility to protect the rights of the property owners so that they are treated equally. He added that his point was that the majority of the surrounding properties are double in size allowing them to build a larger structure. He referred to these properties on a plan he had submitted and noted that they would not need a variance as they do not have the hardship of an extremely small lot. He did not feel it would be right to say their size structure would be inappropriate when a much larger structure could be put on the neighboring lot only ten feet away.

Mr. Edwards stated that, if it were not for the sloping rear yard, the deck they've asked for would not need to be elevated, which creates the need for 6% of this request. The slope creates a problem as it is difficult to have any other configuration without being awkward or unappealing. The current deck is elevated and what is being requested is slightly smaller. He cited a variance granted in March to the Coffeys only several lots away where only 25% coverage was requested. While he feels his request should be granted on its own merits, he also felt it was important to point out similarities with other granted variances. He also noted that they had a level yard which allows for a deck or patio less than 18 inches off the ground which does not require relief.

Mr. Edwards maintained that the large expanse of green space at the back of the property is another special condition and the project is concentrated at the rear of the property. The abutting land is owned by the school and he referred to a letter in the packet from Mr. Peter Torrey in the office of the Superintendent of Schools stating they have no objection to the project.

Mr. Edwards stated that the desired benefit cannot be achieved by another means. They have explored every avenue and the lot is too small to allow conformance with the ordinance.

He stated that it is not in the spirit of the ordinance to restrict enjoyment of property and pointed out that, with a 55% deficiency in lot size and 34% deficiency in frontage, they are only asking for 11% relief. Substantial justice would be done in allowing them to stay in a home in which they have lived for eleven years.

He does not feel that surrounding values would be diminished and included a letter from a real estate professional in his packet. He also stated that he had worked closely with the Planning Department to achieve the closest compliance.

Others speaking in favor of the petition were Gene LaCroce at 68 Brackett Road representing himself and Kimberly LaCroce, Mike Coffey of 86 Haven Road, James Lamond of 84 Haven Road representing himself and his wife Catherine and Michael Chilbritch of 65 Brackett Road representing himself and his wife Ellisande. They made the following points: That the only real visual change will be to the rear which is bordered by a low lying swamp leading to the school; that there is simply not enough room to expand; that the Edwards are excellent neighbors and the project will be modest and tasteful and in keeping with the neighborhood; that property values will, if anything, be improved.

With no one speaking in opposition to the petition, or to, for or against, the public hearing was closed.

DECISION OF THE BOARD

The motion was made by Mr. Marchewka, seconded by Mr. Witham, that the application be granted as presented and advertised. He felt it was overall a modest request and that there was a hardship in the lot, which is small and predates the current zoning. Unlike other lots that may be completely surrounded by other homes,

this abuts a school district with a large expanse of land and parking lot. Commenting additionally on the variance requests, he noted that they were just updating the front stairs which were already nonconforming. The rear yard is large and abuts the school district who sent a letter saying this has no effect on them. The history of the lot includes an opportunity to make a standard size but this didn't happen and the result is no development. Regarding lot coverage, this is a small lot but it has the open space in the rear and the encroachment on anyone would be minor.

For all of these reasons, Mr. Marchewka stated, granting the variance would not be contrary to the public interest. Special conditions require an area variance because of the size of the lot. There is really no other way to expand this house even modestly and no other reasonably feasible way to achieve the desired benefit due to the lot size and the slope at the rear. It is in the spirit of the ordinance to allow the applicants to reasonably expand this single-family home and substantial justice would be done in allowing them to improve their property and remain in their home. There will be no diminution in the value of surrounding properties and we have heard from a number of abutters to that effect.

In seconding, Mr. Witham said he agreed. Although there are four different variances, two are minimal, one to accommodate an entryway consistent with others on the street and another for a bay window extending into the setback. He indicated that he had voted against the last variance request of the applicant because of the side setback intrusion, which has been eliminated. The lot coverage gained is in the rear and the uniqueness there is the open space. While the lot coverage seems high, on a conforming lot, the structure would represent low coverage. He additionally stated that he was pleased that the Board had held its ground on the previous request as the applicants have come back with a well thought out, reasonable request and they have found a way to make it work.

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

12) Petition of **Ronald G. Smith, owner**, and **Donald D. Williams, applicant**, for property located at **1338 Woodbury Avenue** wherein a Variance from Article II, Section 10-207 is requested to allow a 14' x 56' mobile home replacing a 10' x 56' mobile home that was destroyed by fire. Said property is shown on Assessor Plan 237 as Lot 70 and lies within the Mixed Residential Business district.

SPEAKING IN FAVOR OF THE PETITION

Mr. Ronald Smith identified himself as the owner and manager of the property and stated he wanted to clarify the schematic drawing he had made while the applicant was out of town. He mistakenly showed the 14x56 trailer closer than it actually is to the stone wall by two feet. The applicant wanted to split the increase in the trailer width by moving it two feet closer to the stone wall and two feet closer into the land, rather than the full four feet going towards the stone wall.

In response to a question from Chairman LeBlanc, Mr. Smith indicated that the applicant was buying a bigger trailer because the size of the former trailer was no longer being made and added that, as the owner, he has no problem with the larger trailer size.

Mr. Parrott asked what denoted the property line adjacent to the trailer and Mr. Smith indicated it was the stone wall and not the stockade fence. Further questions by Mr. Parrott and responses by Mr. Smith also confirmed that the proposed setback is thirteen feet to the edge and that there is an avenue on the inner, or property, side for emergency vehicles to go through and actually make a circle throughout the park. There are other properties similarly situated with respect to the setback from the stone wall and the emergency avenue is sufficient for fire fighting vehicles and other health and safety concerns.

With no one speaking in opposition, or to, for or against, the public hearing was closed.

DECISION OF THE BOARD

Mr. Parrott moved, and Mr. Jousse seconded, that the request be granted. He stated that the situation was very similar to what was there before – the only difference a couple of feet. His main concern was health and safety access and he felt that had been answered. It's essentially replacing an existing unit and will be the same length, only four feet wider. It's in the same location and he stated he would be hard pressed to see how the public interest would be harmed. A special condition is that the previous dwelling had burned and it would not be reasonable or just to deny replacement in kind.

In response to Mr. Parrott's question about why the variance was needed, Ms. Tillman responded that it was not possible in this case to replace in kind. Mr. Williams found the closest to what had been in place. This is a different situation from the previous mobile home because of the fire.

As additional analysis points in the granting of the variance, Mr. Parrott stated that the fair and substantial justice argument would not hold water when you are talking about replacing in kind in an established mobile home park that probably predates zoning.. This would not injure the public or private rights of others because he did not believe there are any in this case. It is in the spirit of the ordinance to allow people to maintain their homes and substantial justice will be done by continuing a use that has been in place for forty or fifty years. The values of surrounding properties will only be increased by putting and improved home into place.

In his second, Mr. Jousse stated that he had nothing to add to Mr. Parrott's statements.

By unanimous vote, the motion to grant the petition was passed.

13) Petition of **Daniel James LaCava, owner**, for property located at **72 Lincoln Avenue** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) are requested to allow a 6' x 20' porch with a 13'± front yard where 15' is the minimum required. Said property is shown on Assessor Plan 113 as Lot 1 and lies within the General Residence A district.

SPEAKING IN FAVOR OF THE PETITION

Mr. Daniel LaCava identified himself as the owner and resident at 72 Lincoln Avenue. He indicated he was there to request a 6'x20' addition to the porch of his house. He had had a difficult time understanding the hardship aspect of the justification but said that to him it comes down to aesthetics. The existing structure doesn't extend all the way to the edge of the sight line of the house and this addition would help to finish and balance the house. The existing structure is deteriorating and, in contemplating repairs, this seemed a good time to consider extending as it would provide no further disruption to the neighborhood.

In response to questions from Chairman LeBlanc, Mr. Parrott and Mr. Jousse, Mr. LaCava indicated that the window would be left as it is and the front porch roofing would be melded. The proposed new porch would remain open and no closer to the street than the existing one. He passed out exhibits showing a plan of the proposed new porch

With no one speaking in opposition, or to, for or against, the public hearing was closed.

Mr. Marchewka, seconded by Mr. Berg, moved to grant the petition as presented and advertised.

In his motion, Mr. Marchewka stated that the applicant needs to repair and extend an existing porch to make it conform aesthetically with the rest of the house and the only relief the Board would be granting is a setback from the front property line. The porch is already non-conforming, being 13 +/- feet from the property line and the new porch would be the same. He didn't see a detrimental effect on the neighborhood and the new porch would make more sense, visually and functionally.

Considering the Boccia analysis points, Mr. Marchewka stated that this variance will not be contrary to the public interest as he didn't see any change in how the porch will affect the public. The special condition that exists is the fact there is nowhere else to put the porch. It is non-conforming, but it is existing. That is minimal relief that the Board can grant. The variance is consistent with the spirit of the ordinance allowing the homeowner to improve his home adequately and substantial justice is done by allowing this. He also felt that the value of surrounding properties would not be diminished. In fact, they would probably be improved.

In seconding, Mr. Berg indicated that he agreed with Mr. Marchewka and had nothing to add.

Mr. Jousse asked if the makers and second of the motion would be agreeable to a stipulation that the Planning Board recommended – that the existing and proposed porches not be enclosed to be used as part of the interior living space.

There was some discussion among Mr. Marchewka, Mr. Berg, Ms. Tillman and Chairman LeBlanc as to the necessity of a stipulation, with the agreement that a stipulation has more chance of standing out as being a condition of granting the variance.

The Board voted unanimously to grant the variance with the outlined stipulation..

14) Petition of **Christopher J. Marelli, owner**, for property located at **635 Maplewood Avenue** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) are requested to allow a 7'3" x 19'4" one story addition with a 3'± left side yard where 10' is the minimum required. Said property is shown on Assessor Plan 209 as Lot 10 and lies within the Single Residence B district.

Messrs. Berg and Holloway stepped down for this petition.

SPEAKING IN FAVOR OF THE PETITION

Mr. Chris Marelli identified himself as the owner of the property currently under construction at 635 Maplewood Avenue. He is seeking a variance to allow the one-story addition on the side of the house to remain. He stated that when they originally got into the house, the side was three feet off the neighbor's lot line. The existing structure had a tremendous amount of rot and they had to rebuild a section. With the guidelines from the Building Department, we were notified that each wall had to remain standing while we rebuilt this section. Between the framing company and him, that was the agreed understanding to follow those guidelines. They didn't remove the entire wall. What did come into play was a rotted out sill, so they needed to build individual small sections of the walls. They had to do small sections of the wall while the walls remained standing at most points.

In response to a question from Mr. MacCallum and Chairman LeBlanc, Mr. Marelli stated that they are rebuilding in the same footprint and he wasn't sure how long that side of the house had been on this footprint before they started construction. The house was built in the 1950's and he had purchased the house in 2004.

Answering questions regarding the foundation, Mr. Marelli stated that he is using the existing foundation and, on the side in question, it is slab with no crawl space. There is a freeze wall perimeter with nothing in the concrete.

Mr. MacCallum asked the Ms. Tillman if the file gave any indication how long the building had been standing in that condition – with that footprint, to which she responded that there was no year indicated on the property card. Mr. Jousse recalled that he had seen that building in the late 60's and Ms. Tillman found a reference to 1950 but stated that was probably just an estimate. Chairman LeBlanc noted that the side is probably an addition that was put on later and Mr. Marelli added that he believed so.

Mr. Jousse asked if they were being asked to grant a variance before or after the fact, to which Mr. Marelli responded, "After."

Mr. Witham stated that Mr. Marelli had some guidance to leave some section of wall and Mr. Witham assumed that he was given guidance that he would not need a variance, to which Mr. Marelli said, "Yes." When Mr. Witham asked what then triggered the need for a variance. Mr. Marelli indicated that the Building Department had sent him a cease notice to stop work on that side. It seemed to Mr. Witham that Mr. Marelli had been given guidance and followed it, but still received a cease notice.

Mr. Marelli added that that's where the rot came into play. They had to go a little further beyond what the Planning Department wanted us to go on that.

SPEAKING IN OPPOSITION TO THE PETITION:

Elizabeth Dinan identified herself as living at 639 Maplewood, which is to the left as you face the property. She stated she can reach over and touch the addition.

Mr. Parrott asked for an estimate of distance from the wall to the property line and Ms. Dinan indicated it is a small yard and there would be a few yards between her building and the petitioners. In response to Mr. David Witham's question, she stated she had lived there for about a year. She added that, if the Board wanted to know about the footprint, Jason Page had taken measurements.

After a number of questions from Mr. MacCallum, Ms. Dinan said she shared the same question about whether the building was being done on the same footprint and had reason to doubt after conversations with the building inspector and zoning officer. She was happy to see him improving it, but believed that the footprint was larger and closer. She mentioned that she had seen materials for foundations there, which Mr. MacCallum stated may have been because a new foundation was needed. He added that an important issue with him was whether Mr. Marelli was expanding the footprint, which Mr. Marelli told the Board was not the case, that he was just rebuilding the addition. He indicated that she seemed to be saying that it was closer to her property and he was just trying to get at the truth. She felt Jason Page could answer that question as he had measured.

Chairman LeBlanc asked if the existing foundation was there or had she seen him pour a new foundation, to which Ms. Dinan responded she had not, but she saw a lot of broken pieces. Mr. LeBlanc said that part of the reason they were there was because reconstruction was necessary and they were trying to get at whether the foundation is essentially in the same spot that it was when construction was started. Ms. Dinan again indicated that it looks closer.

Ms. Tillman asked whether, if Ms. Dinan were standing in front of the property and looking down the side where this addition in question is, the building would go over the foundation closer to her property? Ms. Dinan

said the overhang or eaves did. Ms Tillman then asked if the side wall went closer to her and she indicated, “no.”

SPEAKING TO, FOR OR AGAINST THE PETITION

Mr. Berg identified himself as a neighbor who had received an abutter notice, which was why he was stepping down from the Board for consideration of this petition. He lives very close and knows the wall that they are talking about. He drops by at least twice a day and, if that side moved, he would have been on the phone. He doesn't think it has. He indicated that it used to be a very small piece and what Mr. Marelli did was put on a second floor and that may have created the illusion of being closer.

After Chairman LeBlanc asked if it was a single story building and Mr. Berg said it was a little one or two room business (building) and he didn't think a house could be made out of that, but Mr. Marelli did. He also never saw any walls come down but he thinks it was a gradual process and in the end what Mr. Marelli was left with was too new and the construction started to be considered a new wall. He recalled a hodge podge of old and new framing going on at same time and guessed that Mr. Marelli crossed the line accidentally at some point.

Mr. MacCallum asked Mr. Berg if he knew what Ms. Dinan was talking about when she said there's a hole in the foundation and Mr. Berg responded that he never went over to look at it so he didn't know, but he never saw a foundation truck either.

With no one else speaking to, for or against, the public hearing was closed.

DECISION OF THE BOARD

Mr. Witham made a motion, seconded by Mr. Jousse that the petition be granted as presented and advertised. He indicated that, while on the surface this looks like quite a bit of relief on the side setback, he sees it as a replacement in kind and trying to bring a building up to to code and to today's standards, not getting any more than what was there before. He stated that it's very reasonable and, in many towns, it's not even required to get a variance to replace in kind.

In considering the *Boccia* analysis, Mr. Witham didn't feel the variance would be contrary to the public interest at all. Basically status quo in term of public interest, even though the second floor addition may feel like more of an impact, that's not part of this variance. The only part is what is being replaced in kind. Continuing, he felt that a variance was necessary given special conditions, those being trying to rebuild something that was already in place. There really is no other reasonably feasible method to do this. He felt they pursued it as best they could to not need a variance, but then the rot won out and they had to go for it. He stated that it's consistent with the spirit of the ordinance to let someone improve their house, without enlarging it, and get it up to code. He did not see any justice in denying this nor that it would diminish the value of any of the surrounding properties, although the abutter feels that it is closer and more intrusive. If you replace something in kind, it's hard to argue that it will diminish the value of surrounding property.

In seconding, Mr. Jousse added that it's not surprising that there would be some rot in that building because the land slopes toward the building and there's quite a bit of wetland and it's going to be hard to get rid of the water unless it is directed around the building.

Mr. Marchewka wanted to clarify that the building is being rebuilt and that he is assuming that the building inspector or zoning inspector will confirm the fact that the building is no closer to the property line. When Ms. Tillman asked if that was a stipulation, Mr. Marchewka indicated, “yes,” and stated that they were questioning the abutter and he didn't think it was fair to ask the abutter whether it's any closer or not. It should be up to the Board.

Chairman LeBlanc asked if his stipulation would then read that the zoning officer will determine that the construction is essentially in the original footprint, to which Mr. Marchewka assented. He asked if this stipulation would be agreeable to the makers of the motion. Mr. Witham stated the word, “essentially,” was important - give or take a couple of inches if they need to square it off. Mr. Jousse had no problem with the stipulation, but felt that if there were a problem, he felt certain that Mr. Page would have brought it to their attention.

The Board voted unanimously to grant the petition as presented and advertised, except with the stipulation that the zoning officer determine that the construction is essentially in its original position on the property.

15) Petition of **Brora, LLC, owner, and ProCon Construction, applicant**, for property located **off Dunlin Way aka Portsmouth Boulevard** wherein a Special Exception as allowed in Article II, Section 10-209(38) is requested to allow a portion of the vacant lot to be used for the temporary outdoor storage of raw or partially finished material, machinery, equipment and vehicles in conjunction with the construction of the Hilton Garden Inn and adjacent condo’s off Hanover Street. Said property is shown on Assessor Plan 213 as Lot 11 and lies within the Office Research district.

With no one appearing for this petition, it was moved by Mr. Parrott, seconded by Mr. Jousse and passed that the petition be tabled to the next regular meeting of the Board.

It was moved, seconded and passed that the Ten O’Clock Rule be waived and the meeting continued.

17) Petition of **Robin M. Hackett and Patti S. Palen, owners**, for property located at **46 Ridges Court** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) are requested to allow: a) 14’ x 17’ deck with a 5’ right side yard where 10’ is the minimum required, and b) 28.2% building coverage where 20% is the maximum allowed. Said property is shown on Assessor Plan 207 as Lot 64 and lies within the Single Residence B district.

SPEAKING TO THE PETITION

Mr. Kenneth Cooperthwait identified himself as the President of Mainely Renovations who is currently renovating the property at 46 Ridges Court. He stated their purpose is to expand a deck which is currently in massive disrepair, keeping the existing side property setback and expanding to the rear. He pointed out an error on the first page of the packet submitted. The existing setback is 39 feet. The proposed expanded setback of the deck would be 35 feet and not 40 feet as had been mistakenly indicated.

He described their the applicants’ situation with young children and said the existing structure presented safety issues with rot and the space between ballisters. They have made improvements to the property with the remaining piece this back porch which is the traffic point in and out of the house. He submitted photographs of the existing structure which is in bad shape and falling off the building.

There is an area on the deck which is only 4 feet deep and abuts the kitchen. This is useless and they want to expand that to eight feet so is functional. The expansion is toward the rear property line and is not in any opposition to any setback. The only setback is to the right when looking at his drawing where ten feet is required and the existing deck is five feet. Mr. Cooperthwait noted that in the rear corner of his lot plan there is a garage set on top of a retaining wall which is literally one foot from the his client’s property, making the point

that the applicant is farther from their property line than the abutters are from the applicant's. For appearance, safety and functional reasons, they propose to the Board to build a slightly larger deck to make it more usable.

In response to a question from Chairman LeBlanc, Mr. Cooperthwait confirmed that they were adding four feet to the existing deck. There is 28.2 % lot coverage now where 20% is allowed and they're asking for 68 s.f. out of 5,000, a minor percentage. There is also a bulkhead door they can see on the third page of the packet, to the right of the stairs of the existing deck. That door goes right to the edge of that deck so moving the deck would cover the bulkhead door and it would be difficult to meet the setback.

Mr. MacCallum asked what would stop them from moving the side of the deck away from the right property line and Mr. Cooperthwait responded that it is the bulkhead. He indicated that one of the submitted plans had been drawn by the architect for the second floor who had not accurately depicted the bulkhead. The deck is right up against the bulkhead door.

In answer to a question from Mr. Marchewka he indicated the stairs are built into the deck footprint and that is right to the edge of the bulkhead door. Mr. Marchewka then asked why, if they were going to rebuild, they could not make it conforming and maybe have it come out further to the rear. Mr. Cooperthwait responded that it would leave a very narrow deck at that point, taking it from 17 down to 12. He added that, while they don't have it in writing, the residents asked everyone in the neighborhood including the abutter and there were no objections.

There was some discussion among Board Members Parrott, LeBlanc, and MacCallum regarding the reasons for locating and sizing the deck, with usability, structure balance and accessibility cited by Mr. Cooperthwait.

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. Marchewka moved, seconded by Mr. Witham, that the petition be granted.

In making his motion, Mr. Marchewka stated that he had struggled with whether there was another way to do it and, if they turned the deck it would make it more conforming, but they have to rearrange stairs and lose a rear window. He felt it was better to be able to look out the window and observe the children. The location is appropriate and they can't achieve the same benefit by moving. It is consistent with the spirit of the ordinance to appropriately finish off the house. And neighborhood values would not be diminished by this modest expansion of the deck.

In seconding, Mr. Witham added that the immediate reaction might be to just move it but they have to consider the benefit sought by the applicant. They are looking at a lot coverage increase of less than 2% and that's reasonable considering the size of the lot and consistent with the pattern in the neighborhood. Looking at the right yard setback, realigning would not function well and, with an elevated driveway on that side, he didn't feel that the abutter's enjoyment of their land would be hindered. The special conditions to be considered in the analysis included the location of the existing house, where the deck is situated on the lot and the stairs in relationship to the house, along with the elevated driveway and the location of the bulkhead. It is a reasonable request with minimal impact on the landscape.

Mr. Jousse added that this is the most practical way of attaching the deck on this narrow lot.

The Board voted 6 to 1 to grant the petition as presented and advertised, with Mr. Parrott dissenting.

18) Petition of **Tony LaCava, owner** and **Bret Taylor d/b/a Taylor Lobster Company, applicant**, for property located at **95 Mechanic Street** wherein a Special Exception from Article II, Section 10-208(41) is requested to allow the existing wharf area to be used for the landing of commercial fishing craft for water related uses such as the buying of lobsters off said craft and the sale of bait to fishermen. Said property is shown on Assessor Plan 103 as Lot 29 and lies within the Waterfront Business and Historic A districts.

SPEAKING IN FAVOR OF THE PETITION

Bret Taylor stated he was the applicant and indicated the property, currently owned by his uncle, had been in the family for several generations, currently owned by his great-uncle Tony LaCava. His grandfather operated a lobster business there for forty years. That wharf and the building on it have been vacant for several years now. He indicated that they were there this evening to return the property to its historical use, buying lobsters from local lobstermen and, in turn, selling lobster bait to them. This property is one of the last vacant parcels of working waterfront in the city and there is currently no other waterfront business that buys lobsters directly from lobster boats and sells bait back. He indicated that he is requesting a special exception to the ordinance for these activities and believed a good case could be made that the activities are within the letter of the ordinance. The spirit in which the ordinance was drafted was to protect activities such as were being discussed that night and to allow them to continue on the Portsmouth waterfront.

He detailed his operations as presented in the packet. The bait would be delivered in small, refrigerated, box trucks and immediately put into bait cooler. It would always be refrigerated, covered and out of sight. The transport and storage areas would be frequently washed and sanitized. Local lobster boats would pull up each afternoon. They would buy their catch and sell bait. Lobsters would be floated pier-side for pick-up and there would be no holding tanks or overnight storage. Trucks would make 2 to 3 stops a day and would not be there for long periods of time. There will be no retail sales and parking only needed for one or two vehicles. There will be no odor problem and they expect to operate 7:00 a.m. to 6:00 p.m., but are flexible on hours. They have tried to address all concerns.

Mr. Taylor concluded that the property in its current state could accommodate few other uses and, while it abuts a residential neighborhood, it was designed for exactly this use, which is within the spirit of the ordinance. They've worked with neighborhood on addressing concerns and will do so on an ongoing basis. They are requesting a special exception for a use that is within the spirit of the ordinance and for activities that will allow for the preservation of the city's working waterfront.

After questions from Mr. Marchewka and Chairman LeBlanc, Mr. Taylor stated that there is an occupied apartment building on the site, the warehouse was previously also occupied by the Snappy Lobster, which was a retail operation. The wharf area is 10 feet below the parking area at low tide and at low tide the crates would float at water level.

SPEAKING IN OPPOSITION TO THE PETITION:

Mr. Donald Koleman, identified himself as an attorney and resident at 122-124 Mechanic Street. He contended that the application was not properly before the Board at this time. He's lived there for eleven years and there has been no business with regard to that location for at least that time. There was a craft shop which was closed down. No fish sales or related activity for at least 11 years. While it's true that it is waterfront property, the issue is raised of abandonment of use. Any other business in the city has to adhere to the zoning regulation with

regard to dimensional requirements and density requirements and, since the use was abandoned, this should be properly an application for a zoning variance because very few of the setbacks are met by this application.

Chairman LeBlanc stated that they were not looking at a variance, they were looking at a special exception, to which Mr. Koleman responded that he understood, but before this could even operate, the applicant would have to come in and seek a variance with regard to the dimensional and density requirements of the statute and that has not been done. He reiterated that the application was not properly before the Board at this time.

Mr. Berg interjected that the building exists and no changes to the building were proposed.

Ms. Tillman stated that, in some towns, the procedure Mr. Koleman is indicating, would be the process but it is not the way the Portsmouth zoning operation operates. It's an existing property; the buildings are there. They would not have to come in for a variance to allow the building again as it exists. This was reviewed with the City Attorney and the Planning Director and the determination was that the application should be presented to the Board as a special exception.

Mr. Koleman stated that, as a lawyer, his reading of the zoning statute would seem to indicate that this is an expansion of a non-conforming use which was abandoned eleven years ago and to come back in again to operate the previous use, he believed the statute says the applicant would have to apply to have a zoning variance because none of the setback and density requirements are met, not the least of which is parking.

Even setting aside his initial point, parking is another reason why the application for a special exception should be denied. There is an apartment house on the site with four units and the zoning requirement is one and a half per unit, which would be six parking spaces. The applicant says he has five and visual inspection indicates lines for two spaces and two others which may or not be on city property according to the tax map. There is the prospect of as many as six refrigeration trucks, two or three in the morning for bait and two or three in the afternoon for lobsters coming into this very narrow neighborhood and parking nose-first against the wall. He detailed his concerns about the maneuvering of the trucks and impact on traffic safety, which is one of the considerations in granting a special exception. He read further requirements from the ordinance for a special exception and Mr. MacCallum indicated that the Board was aware of the criteria.

Additional concerns of Mr. Koleman were excessive demand on services, waste removal, adequate loading room, traffic and idling trucks, odor, and the impact on the neighborhood and property values by three non-residential uses abutting it. It is now a desirable area in which to live and they pay significant taxes. They have a pumping station across the street which doesn't increase the value, but they are stuck with that.

Mr. Parnassus Tournas identified himself as living at 114 Mechanic Street and also urged denial. He felt the intentions were good but there will be a lot more noise, pollution, pests and traffic problems than admitted. He repeated Attorney Koleman's comments about parking and asked for protection from the detriment to his property value.

There was additional discussion about previous occupants and problems they may have presented and the length of occupancy of opposing abutters

An abutter stated she lived at 122 Mechanic Street and had moved there because they like the quality of small community neighborliness and they were well aware of the fact that there were some small businesses operating in the community. They feel they tolerated and worked well with them. Since she moved there 11 years ago, there has been an increase in congestion on their small street and that is her concern. She mentioned the bait operation and the boat launch, the pumping station traffic, and a number of other congestion producers and traffic issues, including Ms. Evelyn Marconi who has a lot of visitors in the morning but, she indicated, they wouldn't ask to leave for anything in the world.

SPEAKING TO, FOR OR AGAINST THE PETITION

Mr. Bret Taylor stated he wanted to address some of the issues. With regard to parking he said there are additional spots in front of the apartment building. There will be two or three trucks total per day, which will be small delivery vehicles, and these will not be left running. He stated he did not believe any other use would cause less congestion. They will not be using the sewer, but draining into the river as does the fish co-op across the channel. Lastly, with regard to diminishing value of properties, he stated that this is a waterfront business use in a waterfront business district.

In answer to questions from Mr. MacCallum and Chairman Leblanc, Mr. Taylor stated his business would differ from the Snappy Lobster other than the fact that that was retail sales in that they kept three bait coolers on the wharf and used a large room for holding tanks for lobsters. The Snappy Lobster was a wholesale business with large refrigerated trucks. Mr. Taylor's business activity will be mainly similar in that he will be selling bait and buying lobsters. He reiterated that the truck deliveries would be two to three aggregate throughout the day.

Attorney Koleman questioned the actual number of trucks that had been represented as visiting per day. He requested that, based on representations made, if the Board does decide to grant the variance, it delineate exactly what the applicant can do based upon those representations. He concluded by again calling the Board's attention to the statute requiring that all the conditions be met for a special exception.

With no one else speaking to, for or against, the public hearing was closed.

DECISION OF THE BOARD

Mr. Berg moved that the Board grant the special exception as presented and advertised. Mr. Witham seconded, but added the stipulation that the hours of operation be 6:00 a.m. to 6:00 p.m. rather than 7:00 a.m. to 6:00 p.m., adding that he felt the applicant was bending over backwards to appease the abutters and this business served lobster boats which are long gone by seven. He'd like to see the business succeed and 6:00 a.m. is reasonable.

After some discussion an additional stipulation was added that there would be no trucks or reefer units running while parked for deliveries or pick-ups.

Several members spoke in support of preserving this type of business in the waterfront business district as being part of Portsmouth's heritage. They indicated that the residents are in homes that were once those of working waterfront people so some noise, traffic and fish smells should be expected. It is not up to them to "tolerate" a business which is exactly where it belongs. The following were outlined as the bases for granting a special exception:

- There will be no hazard to the public or adjacent property from potential fire explosion or release of toxic materials.
- As demonstrated by abutters, property values have increased with proximity to a working waterfront district and this type of business fits in exactly with the essential characteristics of the neighborhood.
- Possible noise, odor, parking and outdoor storage issues have been adequately addressed by the applicant.
- With limited deliveries and pick-ups, as well as the types of vehicles used, there will be no traffic hazard created or increase in congestion.
- There will be no excessive demand for municipal services and no runoff of water to adjacent properties.

The motion was passed unanimously to grant the special exception with the stipulations that (1) the hours of operation will be limited to 6:00 a.m. to 6:00 p.m.; and, (2) that there will be no trucks or reefer units running while parked for deliveries or pick-ups.

III. ADJOURNMENT

The motion was made, seconded and passed to adjourn the meeting at 11:35 p.m.

Respectfully submitted,

Mary E. Koepenick
Secretary