

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

7:00 p.m.

CITY COUNCIL CHAMBERS

**July 19, 2005
Reconvened on
July 26, 2005**

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

MEMBERS EXCUSED: Nate Holloway

ALSO PRESENT: Lucy Tillman

I. PUBLIC HEARINGS

8) Petition of **Paul J. Carney**, owner, for property located at **54 Rogers Street** wherein the following are requested 1) a Variance from Article II, Section 10-207(14) to allow a 2nd dwelling unit to be created on a 2,682 sf lot where 3,000 sf of lot area is the minimum required and lot coverage exceeding the 40% maximum allowed, and 2) Variances from Article III, Section 10-303(A) and Article IV, Section 10-401(A)(2)(c) to allow the following: a) a 7.5' x 13'1" addition with a 1'+± right side yard where 10' is the minimum, b) an open deck to the rear of the dwelling within the required 10' right side yard and exceeding the 40% maximum building coverage; and c) a front entry within the required 5' front yard and exceeding the 40% maximum building coverage. Said property is shown on Assessor Plan 116 as Lot 44 and lies within the Mixed Residential Office and Historic A districts. Case # 7-7

SPEAKING IN FAVOR OF THE PETITION:

Mr. Glen Johnstone identified himself as the architect who is working with the owner, Mr. Paul Carney. As Mr. Carney was unable to attend the meeting, Mr. Johnstone read a letter from him listing the variances that are being requested and the reasons he felt that the criteria for granting the variances had been met. In his letter, Mr. Carney cited properties he felt were similar, i.e., 44, 36 and 65 Rogers Street, and that had been granted variances. He also indicated that he had received positive input at the Historic District Commission work sessions.

In response to a question from Mr. Duncan MacCallum, it was determined that the current lot coverage percentage is 45.1%.

Mr. Johnstone continued that this is an irregularly shaped building where they're trying to carry the existing lines of non-conformity back and create stairs for the upper levels. He mentioned that, in meetings with the Historic District Commission, they went back and forth on the dormer size and scale and the Commission seems happy with it now.

Chairman LeBlanc mentioned that the rear deck extends out in back of the existing addition

and asked if they were going to build the new addition to the edge of the deck, adding that it is not squaring off the house, but creating another bump-out.

Mr. Johnstone replied that the existing deck in the back would be taken out and, as shown in the upper corner of the drawing, there would be stairs going to the upper levels allowing egress from that space. He cited Section 10-401(a & d), which states that egress for fire safety is not considered an expansion of the non-conforming structure. They've worked with the HDC to have the stairs match the existing building.

SPEAKING IN OPPOSITION TO THE PETITION:

No one rose to speak.

SPEAKING TO, FOR OR AGAINST THE PETITION:

Mrs. Kathleen Dwyer identified herself as representing the Portsmouth School Department, an abutter to the property. She stated she was speaking to the proposal so the Board will consider the concerns of that Department, a particular concern the addition of a second dwelling unit. The area is congested, particularly at certain times of the day when buses have to wrap around to that side. The school also has a driveway that comes out right next to this property and to add additional residential space there would be a concern. She understood that it is already a non-conforming lot and would become even more non-conforming, which is of concern to the School Department.

With no one else rising to speak, the public hearing was closed:

DECISION OF THE BOARD:

Mr. Arthur Parrott raised as a point of information the fact that the adjacent lot at 44 Rogers Street, to which the applicants referred, is 3374 s.f., which is 10% over what is needed for a duplex on that lot.

Mr. Duncan MacCallum moved that the petition be denied, which was seconded by Mr. Arthur Parrott.

Mr. MacCallum stated that in an area where 40% is the maximum coverage allowed and the property is already over, they are seeking to add even more. In addition, as the staff memo points out, they are seeking relief from several different requirements of the ordinance at the same time. A significant request is to add a second dwelling unit on a lot where 3,000 s.f. is the minimum required. He indicated this was a substantial deficit in an area well built up and already with high coverage. Noting that the property is typical of others in the neighborhood, Mr. MacCallum stated he didn't see a legally cognizable hardship. In response to the applicant's citing of other variances in the area, he felt because there may have been a mistake made once is no reason to make it again.

Mr. MacCallum shared the concerns of Mrs. Dwyer regarding the effect on the school children and stated that granting the request would plainly be contrary to the spirit of the ordinance which seeks to prevent properties from becoming so overcrowded they pile on top of each other.

Mr. Parrott agreed, stating there is too much development for the size of the lot. The next door lot was presented as justification but that is in compliance and this one is not.

Mr. Steven Berg stated he was not opposed to having 2 units, however, he didn't see the hardship in terms of having to expand to create another unit, even if it were in the public interest to create more housing. There's a lot of structure proposed for a small lot and, since the motion is for all of the variances, he must go against the whole thing.

Ms. Tillman clarified that a variance would be needed to create 2 dwelling units, no matter what and Mr. Berg added that he had corrected himself.

Mr. David Witham stated that some parts were grantable but overall to get the second dwelling unit, the property has to go through a major transformation. He felt it was very intense for a very small lot. A major concern was parking, with three to four cars having to share one driveway, leaving one or two to park on the street, creating more of a public nuisance.

The Board voted unanimously to deny the request for variances.

9) Petition of **Gary P. Morin**, owner, for property located at **238 Melbourne Street** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) are requested to allow: a) an 8' x 18' one story addition with a 21'+ front yard where 30' is the minimum required, b) a 12' x 23' deck and stairs with an 8'+ left side yard where 10' is the minimum required; and c) 20.8% building coverage where 20% is the maximum allowed. Said property is shown on Assessor Plan 233 as Lot 82 and lies within the Single Residence B district. Case # 7-8

SPEAKING IN FAVOR OF THE PETITION:

Mr. Gary Morin identified himself as the petitioner and owner of 238 Melbourne St. Referencing the plans provided in packet, he noted that the property is a small lot, 54% less than the minimum, which makes it difficult to put any size structure on it without violating the setbacks or coverage requirements. In the front, the entire structure is non-conforming. The proposed addition to the left front will remain in same location as the sunroom/ porch, which is 21 feet from the front property line. The deck to the side is already non-conforming and they propose the new deck in the exact same location. No changes are proposed to the rear.

Mr. Morin stated that with the front, side and rear property lines, there is no room to make any changes without a variance. While there is room to the right, any change would involve loss of parking and it would not be conducive to the layout of the house to put the kitchen on the opposite side. Any changes would create a hardship. With regard to lot coverage, they are only asking for .8% greater than the 20% required. The increase comes from the deck which is filling up what currently is dead space.

Addressing the criteria for granting variances, Mr. Morin stated that this would help increase the value of his property and, thus, the surrounding properties.

He felt it was in the spirit of the ordinance as the changes would not overly encroach or cover the lot excessively. There will be no net change to the structure layout. He stated it would be in the public interest to increase values and tax revenues, with substantial justice done for the same reason.

In response to questions from Mr. MacCallum, Mr. Morin confirmed that the sunroom would be converted to a kitchen with the front face remaining the same and only the back, currently the deck, changing.

A short discussion followed on the location and dimensions of various features on the plans.

Ms. Kathy Young stated that she is the direct abutter on the left and that she has no objections to the proposal. She has seen various additions in the neighborhood over the years and they have always made things better.

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

With no one rising, the public hearing was closed.

DECISION OF THE BOARD:

Mr. David Witham moved, seconded by Mr. Alain Jousse, that the petition be granted as presented and advertised.

Using the *Boccia* analysis, he provided the following reasons for granting the petition:

- This project is well thought out and defines reasonable. The minimal relief requested will not be contrary to the public interest.
- The undersized lot and an angled lot line to the left represent special conditions creating a hardship if the ordinance is enforced.
- With the lot size, there is no other method to achieve the same benefit without a variance.
- It is consistent with the spirit of the ordinance and substantial justice will be done by allowing residents to improve their homes with no adverse effect on abutters.
- The value of surrounding properties will not be diminished. A direct abutter spoke in support of the project stating additions have made the neighborhood better.

In seconding, Mr. Jousse noted that most of the lots in that neighborhood are undersized so if any of the dwellings want anything done, they need variances.

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

10) Petition of **Mark and Lisa Herrholz**, owners, for property located at **126 Martha Terrace** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) are requested to allow: a) a 192 sf deck with a 35.7' ± rear yard where 40' is the minimum required, b) the existing detached garage to be attached by adding a 264 sf breezeway now requiring a 20' side yard for the garage where 14' ± exists; and, c) 21.6% building coverage where 10% is the maximum allowed. Said property is shown on Assessor Plan 283 as Lot 25 and lies within the Single Residence A district. Case # 7-9

SPEAKING IN FAVOR OF THE PETITION:

Mark Herrholz identified himself as the owner of 126 Martha Terrace. He would have liked to have the wording a little different in the description because what they would like to do is put the breezeway in and then add a deck onto it. There's a ten foot walkway with a deck there now. What they're proposing is basically filling in the deck with a breezeway connecting garage to house. He noted there was a variance for the garage in the past. Currently the structures are non-conforming with 14.4% of lot coverage. Where they are located, lots need an acre but their lot is much smaller so they must come for a variance which Mr. Herrholz believes would be in the spirit of the ordinance. The proposed deck will not encroach any further into the back yard. The variance would allow them to utilize the property without encroaching on neighbors. Adding a breezeway would allow the use of the property to its fullest extent and any other option would be very expensive. He stated that he believed it was substantial justice to meet the needs of an expanding family and the value of surrounding properties would not be diminished.

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

With no one rising, the public hearing was closed.

DECISION OF THE BOARD:

Mr. David Witham moved that the petition be granted as presented and advertised, with Mr. Steven Berg seconding.

In making his motion, Mr. Witham stated that they sometimes get requests with the structure expanding out, but this is more or less expanding inward with a breezeway and modest size deck.

Following the Boccia analysis, he stated the following reasons for granting a variance:

- With minimal impact on the neighborhood, the variance will not be contrary to the public interest.
- Special conditions exist resulting in a hardship requiring a variance. Little can be done in terms of lot coverage on this very small lot that predates zoning.
- In-filling from the garage to the house is the most reasonable way to achieve the benefit of fully utilizing the property; and the deck, if built to meet the required setback, would be too narrow to be usable.
- The variance is consistent with the spirit of the ordinance which allows this type of expansion in similar neighborhoods in other districts.

- There will be no diminution in the value of surrounding properties by this modest expansion and no one has spoken against the proposal.

In seconding, Mr. Berg noted that this is a Single Residence A district, but is an older street with 30 plus years-old homes and most houses on the street do not comply with the district’s zoning requirements. With the existing conditions, connecting the garage makes sense within the spirit of the ordinance.

Mr. Duncan MacCallum indicated he would be voting against the petition as he could not justify the almost doubling of allowed building coverage. He didn’t feel it was the Board’s call to say whether the limits were good or bad – that was the Council’s call. Mr. MacCallum also stated that he saw this is as a classic example of piecemeal development as outlined in *Bacon vs. Enfield*. He saw no hardship and felt the property was typical of the area.

Mr. Berg replied that he had looked at the zoning map and every other Single Residence A district was significantly different in character from Martha Terrace. Neighborhoods that are similar neighborhoods are typically Single Residence B. He stated that it is up to the Board to grant relief and cited examples of what the same house and proposed additions would represent in a Single Residence B district.

Mr. Witham added that in the issue of lot coverage, they have to look at the big picture. Lot coverage is there to control density. The zone allows double the footprint, but the lot is small and predates zoning – in some ways the applicant is handcuffed. Mr. Witham agrees with the zoning, but finds the variance reasonable

By a vote of five to two, the Board voted to grant the petition as presented and advertised. Messrs. Jousse and MacCallum voted against the motion.

11) Petition of **Patrick Ellis**, owner, for property located at **235 McKinley Road** wherein a Variance from Article III, Section 10-302(A) is requested to allow a 4’ x 21 one story addition to the front of the dwelling with a 27’± front yard and a front entry porch 4’ x 9’ with a 23’± front yard where 30’ is the minimum required in both instances. Said property is shown on Assessor Plan 251 as Lot 28 and lies within the Single Residence B district. Case # 7-10

SPEAKING IN SUPPORT OF THE PETITION:

Patrick Ellis identified himself as the owner of the property at 235 McKinley Road. He stated that they have run out of space and looked at options for expanding. The house was built before the ordinance and is not parallel to the property line. The closest point of the house is 30’ back from the street. They have asked their neighbors who said they will support what they are seeking, which is a 3 foot variance from the setback. After submitting, they learned from the building department that egress counts toward the setback and the City may consider the proposed front steps to be a front porch which would further encroach. He passed out to the Board a front elevation indicating how the house would look with front steps. Mr. Ellis stated they were not looking to build a porch.

In response to questions from Chairman LeBlanc, Mr. Ellis stated the stairs are 3 feet tall and have a gable roof over them.

After Mr. MacCallum questioned a discrepancy in dimensions he saw between the departmental memo and the presented drawing, Ms. Tillman clarified that the original site plan was prepared when Mr. Ellis did not realize that the front entry had to be included. She referred to the floor plan and the bump-out of the living room. When the covered entry is added, it reduces the front setback even more. She also clarified that the ordinance exempts minimum egress, but this is wider and covered.

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

With no one rising, the public hearing was closed.

DECISION OF THE BOARD:

Mr. Alain Jousse interjected with a final question of whether the applicants had considered going up rather than out. Mr. Ellis responded they had, but any plan creates awkward, narrow and unusable rooms and spaces so they rejected the option.

Mr. Steven Berg moved that the application be granted as presented and advertised, with Mr. David Witham seconding the motion.

Mr. Berg stated that, in this house, the kitchen is very small and a design change is needed. To make the kitchen line up anywhere close to functionally adequate requires relocation of the basement stairs and the best place to put them is the living room and to do that requires a bump-out in the front of the house. Any other way would be very expensive. In addition, having front steps exposed to the elements is dangerous and covering them is a safety issue.

In considering the *Boccia* analysis, he made the following points:

- The variance would not be contrary to the public interest and covering the front steps will actually remove a possible safety issue.
- Special conditions exist requiring a variance to enable the proposed use. The house is too close to the street and lies at a funny angle, necessitating more relief.
- Any other method to achieve the desired benefit would require expensive interior reconstruction.
- Substantial justice would be done and the value of surrounding properties not diminished by an attractive addition not affecting side or rear abutters.

In seconding, Mr. Witham agreed and said the variance is just to get a decent sized living room and have the front entry covered. This would be a more pleasing structure and have no adverse effect on the neighborhood.

Indicating that he did not see a hardship requiring relief, Mr. Duncan MacCallum indicated he would not be supporting the motion. He felt there were no special conditions and the property

was typical of others in the neighborhood. He concluded that to grant would be moving in the direction of making an aberration in the neighborhood.

By a vote of five to two, the Board voted to grant the petition as presented and advertised. Mr. Arthur Parrott stood down for the petition.

I. ADJOURNMENT

The motion was made, seconded and passed to adjourn the meeting at 8:30 p.m.

Respectfully submitted,

Mary E. Koepenick
Secretary