MINUTES OF THE BOARD OF ADJUSTMENT MEETING
PORTSMOUTH, NEW HAMPSHIRE

7:00 p.m. **CITY COUNCIL CHAMBERS** **August 16, 2005**
Reconvened on
August 23, 2005

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

MEMBERS EXCUSED: Bob Marchewka,

ALSO PRESENT: David Holden, Lucy Tillman

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I. **OLD BUSINESS.**

A) Approval of Minutes:

August 25, 2004	November 23, 2004
October 19, 2004	December 14, 2004
October 26, 2004	April 26, 2004
November 16, 2004	July 26, 2005
	Excerpt of Minutes-July 19, 2005

Mr. Berg noted a correction on page four of the November 16, 2004 Minutes at the bottom of the page, which should read "right-of-way." There were no other corrections made.

A motion was made, seconded and passed unanimously to accept the Minutes as corrected.

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B) Request for Rehearing, by Wal-Mart Real Estate Business Trust, for property located at **2460** and **2460A Lafayette Road**, wherein a Variance from Article IX, Section 10-908 Table 14 was denied
}to allow 365.95 sf of attached signage where 300 sf is the maximum allowed.

Chairman LeBlanc advised that Mr. Berg would be stepping down for this request.

Mr. MacCallum moved that the request for rehearing be granted, seconded by Mr. Holloway.

Mr. MacCallum stated that his grounds for granting were the same as in the previous request for rehearing. There is something unsettling to him when an applicant comes before them for additional relief, but in this case, the Board took away something which Wal-Mart already had. The first time, around the size was reduced to 330 s.f.. Wal-Mart requested a rehearing, which

was granted and held. A further hearing granted a variance outright but reduced the s.f. to 300 s.f. He felt yet another hearing was merited.

Mr. Holloway stated he agreed with Mr. MacCallum.

A motion to grant a rehearing passed by unanimous vote of the Board.

I. PUBLIC HEARINGS

1) **Petition of Myles Bratter, owner**, for property located at **159 McDonough Street** wherein a Variance from Article III, Section 10-302(A) was requested to allow a left side yard of 0' where 10' is required and building coverage of approximately 56.5% where a maximum of 35% is allowed. Notwithstanding the above, an Administrative Appeal is made seeking to overturn the Administrative Decision to deny the issuance of the applicant's building permit. Said property is shown on Assessor Plan 144 as Lot 46 and lies within the Apartment district.

Mr. Berg stepped down for this petition.

SPEAKING IN FAVOR OF THE PETITION.

Attorney Robert Shaines, representing Mr. Myles Bratter, read from the Letter of Decision for the June 21, 2005 meeting at which the Board had unanimously granted a variance. Included in the reasons for granting the variance were that it would not be contrary to the public interest as it was an allowed use and the location had been the same for 60 years. He continued referencing the letter quoting that the variance was "…consistent with the spirit of the ordinance."

Attorney Shaines stated that Mr. James Hewitt had filed a motion for rehearing in which he essentially said he disagreed that the structure to be replaced was of the size Mr. Bratter claimed. Since that time, Mr. Hewitt has kept up a steady barrage of correspondence which included a statement that he had been reluctantly pressed into service and "…assisted (City) departments with the seemingly elementary task of determining the dimensions of the former garage." Attorney Shaines pointed out that, while Mr. Hewitt owns the abutting property, he has not resided there for 14 years.

He stated they have witnesses to present and he is going to direct his remarks to the issue of whether the building being replaced is the same size as that which was removed. He passed out a tax card handout, stating that one of the issues was that at the last hearing, a tax card was presented showing that the garage being replaced was essentially 20' x 20'. In 1989, the Cabot St. house had a 10' x16' building listed as being a detached building. 159 Mcdonough Street had an 11' x 18' building listed as a detached building. These two abutting buildings are shown on pages one and two of the handout.

Mr. Bratter applied for a building permit May 19, 1989, tearing down both garage and the shed, and proposed to construct a building 19' x 19'. Attorney Shaines referred to the building permit application, with the attached permit issued to construct that garage. On September 19, 1989, another permit was issued to construct a new roof for garage. On the application dated

September 14, 1989, the footprint for the garage is listed as 380 s.f., or 19' x20'. Attorney Shaines stated this structure stayed in place until this year when it rotted out. While repairs to a sewer line were being made, Mr. Bratter hit part of the building with a backhoe and it was in such poor condition that it collapsed. He then came to the City to rebuild.

The abutter, Attorney Shaines stated, says that's not so. The building was 11' in width by something in length. The fact is, Attorney Shaines maintained, that the exhibits from city's records show what was requested. There are two diagrams attached to the September, 1989 application, one showing an 18'6 " width and somebody clearly overwrote zero over that and the second diagram in the City diagram shows 18'6" very clearly. They also have Mr. Colwell's drawing. He is a licensed surveyor for Ames MSC that they asked to locate the foundation on the site for the building that came down. He stated that Mr. Colwell would tell them the foundation measured approximately 20' x 19'.

In addition, the Board has a series of photos that Mr. Hewitt submitted which purport to show what the garage looked like in 1989 and thereafter. One of those shows the roof of the structure, which they enlarged and asked Corey Colwell to use to determine, from the size and number of rows of shingles, the angle of the roof and garage width. Attorney Shaines noted that Mr. Hewitt has said photo was taken in 1990 and pointed out a notch in the roof which, he stated, was on the roof that actually came down in 1989. They have several witnesses who either live in the immediate area or worked on the garage in 1989.

Attorney Shaines concluded that there was no fraud committed on this Board and his client has been subjected to defamatory and libelous statements. This Board did the right thing in granting a variance and he requested that they affirm their vote.

Mr. MacCallum referred to the letter from Ms.Elliott of July 12, 2005 and asked if Attorney Shaines' client was speaking to any of the assertions in that letter. Attorney Shaines responded he did not have the letter, but that Ms. Elliott was there and could speak for herself. She changed the card at Mr. Bratter's request when he pointed out to her the facts of the situation. Attorney Shaines felt any change in the card was appropriate because it reflected the actual facts.

Mr. MacCallum then referred to an aerial photo in the materials and asked if they were disputing the accuracy of the photograph. When Attorney Shaines said it was so blurred and indistinct, he couldn't tell what it is or when it was taken, Mr. MacCallum pointed out that it indicated May of 2000. Attorney Shaines said he couldn't tell the size from that and, after Mr. MacCallum asked again if they were disputing it, said it shows what it shows and has no dimensions. He finds it difficult to say whether he disputes it.

Mr. MacCallum stated it purports to show where various buildings sit. Attorney Shaines said it shows two houses and the attachment rebuilt in 1989, but they are talking about the width of that garage.

Mr. MacCallum asked if they were disputing the supposition that this photograph shows relative width in relation to other structures on that property and Attorney Shaines said he couldn't

answer that; it takes photo interpretation and he was not an expert. It takes knowledge of height and type of lens used and the angle of deflection of the plane.

Mr. MacCallum asked Mr. Holden of the Planning Department what the occasion was for taking the photograph and Mr. Holden responded that it was one basis for determining tax records. The entire city was flown on that date.

In response to questions from Mr. Parrott, Attorney Shaines clarified that the crux of the matter before them was the width of the connector building, which was rebuilt in 1989 in accordance with the submitted permits; that it had rotted away since that time because of its proximity to other structures allowing in water.

With specific reference to the tax card, Mr. Parrott asked if it was his position that the tax card, which shows just one building at approximately 11' x 18', was simply in error.

Attorney Shaines responded that this was the building that was removed – two structures, both removed in 1989. When Mr. Parrott stated the tax card shows only one building, Attorney Shaines stated there were two structures and he didn't think that was the issue. There was a shed and there was a garage and that's why he showed them both tax cards. If they look at the Cabot Street card, there is a 10' x 16' structure.

Mr. Parrott asked if he knew the age of either building and why only one was shown on the tax card when probably two should have been shown. Attorney Shaines said he couldn't answer that; he just knows that the tax card for the Cabot Street property showed the shed and the one for the McDonough Street property showed the garage and that these two abutted.

Mr. Parrott said he was not speaking of the so-called shed, which was really a covered-over trailer. Attorney Shaines said he was not either and that's why he brought the tax cards.

Mr. Corey Colwell stated he was representing Ames MSC on behalf of the application and confirmed his firm was asked to survey and depict what exists there now. He submitted three acetate overlays, created to overlay the 22" by 34" plan, to show his understanding of chronological events of how the middle building was constructed. The dates are estimates.

The first acetate shows the building around 1920. Based on the tax card and concrete footing located on site, the bldg. labeled 1920 was constructed roughly in the 20's. The dimensions from the concrete footing show clearly what the garage looked like and this matches the dimensions on the tax card issued earlier. Sometime around 1946, the shed was added – that's the second acetate that shows "Building +/- 1946. He pointed out a gap between the building to the north and that to the south. There was no evidence that the shed was on a concrete footing but was placed on the ground.

In 1989, the square building marked "+/- 1989" was constructed and if that acetate were overlaid on the previous acetate, the dimensions are close to the same except for the front portion of shed. There's a little space between the building to the south and the front portion of the shed. The 1989 building was built in almost the identical spot as the 1946 building.

Mr. Colwell stated he depicted on the plan what existed when he did the survey two months ago. The dimensions of the 1989 overlay are almost exact to the dimensions on the plan. One difference is slightly to the rear and north. The existing building is very slightly larger than what is shown on the 1989 acetate. The reason is that the square labelled 1989 has a gap between the two buildings. Apparently, water was getting in between and rotting out both structures. To eliminate that, the current structure was erected adjacent to the buidings. Based on tax cards and what was found in the field, this is his estimation of what happened.

Mr. Witham stated he was trying to figure out the 1946 building. He felt the drawing was based on what Mr. Colwell had been told and, looking at the third sheet, 1989, seems to be simply combining the two and slightly squaring it off. He asked Mr. Colwell what evidence he had, shy of tax records, that the 1946 and 1989 buildings existed in their footprints.

Mr. Colwell responded that, for the 1946 building, the only evidence was the concrete footing of which remnants are still in place today – that and the tax card. He confirmed this was the footing that separates the two buildings. When Mr. Witham asked if it could just be the footing for the 1920 building, Mr. Colwell responded that, from testimony only – he had not verified it – he was told that the shed had a connecting wall and was in other words attached to the garage with a door.

Mr. Witham said that he was then basing this on a footing and Mr. Colwell responded that it was the footing as well as testimony that the two buildings were connected. He said he was basing the 1989 building on a footing in the rear that still exists on the site and was from the 1920 building and also remnants of concrete under the structure that is there today. Two different pours can be seen – one for the 1920 and one for the 1946 building. That, combined with tax cards, is what he based 1989 on.

After questions from Mr. MacCallum, Mr. Colwell stated his first visit to the site was roughly in mid-April and that the testimony he referenced was by the current owner, Mr. Bratter, and neighbors in the area. He had not had a chance to look at the records of the Planning Department.

Mr. Parrott asked, with respect to the building rotting out since 1989, if the reason seemed likely to him and would he expect to find matching damage on either of the houses on the lot. Mr. Colwell responded that he was not looking for and did not see damage on the house – he was out to survey the property.

Mr. Parrott asked, with respect to the 1946 building, what exactly was the nature of the foundation he found to support there was a structure. Mr. Colwell said there was no concrete pad the size of the ’46 building. The remnants now are the ’89 building. The ’46 building is based entirely on the tax card that lists a shed with dimensions and Mr. Bratter telling him that the shed was abutted up to the garage with a door passing through.

Mr. Parrott asked when the 1946 building collapsed or was destroyed, and what evidence was there to support the dimensions shown for the front edge of that building, toward Cabot Street.

Mr. Colwell stated he did not know. If someone dug in the ground on the edge of the building toward Cabot Street there are some concrete remnants there now.

Mr. Parrott stated that is what he is trying to get at – the nature of what he was calling the foundation, and Mr. Colwell indicated it looked like a concrete pad. It was very dark underneath but it appeared to be concrete on top of gravel and appeared to be to support a structure. He wouldn't call it a frost wall.

When Mr. Witham asked whether in talking about remnants, it was pieces or were there actual 8 foot lengths under the 1946 section and Mr. Colwell stated there were. Mr. Witham asked whether that was the building he stated wasn't on a foundation and Mr. Colwell said he might be confusing the issue. His understanding is that the '46 building was not supported by concrete. It was placed on the ground. The remnants there today are for the 1989 building so, sometime between or around '89, a supporting structure was placed for that '89 building.

Mr. MacCallum asked when he had last visited the site and Mr. Colwell responded around May 27 or 28 and he basically knows what it looks like and it hasn't changed since then.

Mr. MacCallum asked as of the time of his first visit, had the new concrete foundation been poured. Mr. Colwell said he did not see on the first visit any concrete and the reason is that the concrete is completely covered by what is being constructed there now. Only if you go into the building and down through do you see the concrete.

Mr. MacCallum asked if the wall joists were up at the time of his first visit and he indicated yes.

Mr. Peter Faust indicated he lives in Taunton, Massachusetts and was employed by Mr. Bratter during the summers of '85 to '90. He did auto body work on cars, occasionally in the garage. Next to the garage was the shed. He recalls in approximately 1989 the building being torn down and you could fit two small cars into the new structure which was facing the McDonough Street side. He would put one up against the wall and get in and out on the driver's side.

In response to questions from Mr. MacCallum, Mr. Faust said he had just looked at the site and the new structure appears to be the same size, except with no walls.

The following abutters/neighbors also appeared in support of the petition:

Mr. Alan Silverblatt – lives at 2 Clinton Street and lived last year at 343 Cabot Street, a tenant of Mr. Bratter.
Mr. Robert Padian, 312 Cabot Street
Ms. Stephanie Goupil, 179 McDonough Street
Ms. Hannah Duehl, 1009 Maplewood Avenue, formerly 169 McDonough Street
Mr. Liam Needham, 311 Cabot

The points made by various of these supporters were that their recollection was that the garage was the same size as now with the only difference that now there is no gap. Another stated that

the lot coverage and placement of structures is not unusual for the neighborhood. They agreed the construction was an improvement and urged that the petition be granted.

Mr. Colwell stepped up again to state they did a rough measurement of the shingles and based on the course of shingles and the abutting neighbor's photo, they estimated the shingled area to be about 8 feet which would have been half of the building width. The tax card shows a width of 16 feet, he believed, and this seems to support what was found on the site.

SPEAKING IN OPPOSITION TO THE PETITION.

No one appeared.

SPEAKING TO, FOR, OR AGAINST THE PETITION.

Chairman LeBlanc requested that Ms. Lauren Elliott step forward and she confirmed that she is the Tax Assessor for the City of Portsmouth.

Mr. MacCallum referenced her letter of July 12, 2005 concerning this property and asked if she had an additional notes memorializing her visit.

Ms. Elliott stated she was there for an abatement as Mr. Bratter was concerned about his overall assessment and she walked through the interior of both houses, but not the garage. She did not take measurements.

When Mr. MacCallum stated that the assessment had been reduced and asked if Mr. Bratter had been sent a notice of tax abatement, Ms. Elliott stated he would have received a form that shows prior and current assessment with a refund attached. She added the change she made to Mr. Bratter's card was based on the overall condition of his property and had nothing to do with the garage.

In response to another question from Mr. MacCallum, she stated she had driven by recently but took no notice of the garage as it is one of the items that are listed on the card as having no value and was not part of the issue raised. She remembers going through the interior of both houses with Mr. Bratter but not checking any measurements. The measurements were checked supposedly in 2002 when a firm did re-valuation for the entire city. She then corrected the year to be 2000 noting that the entry information on the card indicates 2000, but she can't say whether this means they actually measured the property.

Mr. MacCallum asked if they were supposed to measure it and Ms. Elliott indicated, "yes." She added the previous cards were all rather consistent. If you look at the cards from the re-valuation in 2002 and prior cards, they all show basically the same measurement. Whether all the buildings were picked up, she couldn't say as they were only looking at buildings of value.

Mr. Parrott stated that the Board frequently has reason to look at tax cards and they tend to believe the measurements on them. When he added that it's unusual for the actual dimensions to be questioned, Ms. Elliott stated it happens. He indicated the card provided to them shows a

connector building of approximately 11'x18'. He asked whether if anything were attached to that, such as a leanto or a shed, even though in poor condition, should that have been shown on the card.

Ms. Elliott reiterated that would not necessarily be true as they don't pick up all items if not of value. That judgment is made by her staff or herself or whoever was doing the evaluation at that point and time.

Mr. Parrott asked what the process is for making a change. Apparently Mr. Bratter walked into her office and represented that a change had been made. He asked what kind of evidence the City wanted when a taxpayer states his property has changed. Ms. Elliott stated they assess as of April 1 of each year. If somebody questions, they ultimately verify and, for assessment, see what was there as of April 1st. Mr. Bratter came in and said there is a 20'x20' structure there. She still is making adjustments to the April 1, 2005 assessments and she will probably make an adjustment to Mr. Bratter's card because as of that date, the structure wasn't complete, according to her understanding. Like any other building permit they get, they will ultimately verify at some point.

Chairman LeBlanc asked if she checked with the Building Department to see if a permit has been issued for a certain size increase. Ms. Elliott stated they do get copies of permits from the Building Department from time to time, but it is not the concern of her department whether a permit has been issued. When someone comes in and says there's a new structure, they go out and measure it and add it.

Mr. Witham noted that on the tax card, it lists the garage as 11' x 18' and then it lists a shed as 10' x 16'. He asked what the "fr" after that meant and Ms. Elliott stated that means fair condition. When he asked if they could assume that if a structure is listed in fair condition and the size is given that it's probably going to be included somewhere, Ms. Elliott responded that, if there is a value next to it, it is included. If not, no.

Mr. Witham asked if they had an idea of where the shed is and she responded that they do not do concern themselves with where the buildings are located on the property. They pick up the exterior measurements down to the nearest foot and put them on the property record card and assess it accordingly.

He asked if the shed near the railroad tracks was credited with Mr. Bratter's property and Ms. Elliott answered she didn't know.

Mr. Jousse asked if whoever is coming around to do the assessing has the current tax record that the homeowner can view. Ms. Elliott stated that with the revaluation that's being done now, yes.

When Mr. Jousse asked how often the homeowner would correct the inspector or visitor to tell them, "well, no my garage is not 11x18, it's really 20x20," Ms. Elliott stated that people don't usually come into the office and ask for more tax – it's usually the other way around.

Mr. Jousse asked her to speculate if she would. Up to April of this year, the homeowner was being taxed on an 11' x 18' building. He realized that he was going to need a building permit or something to replace it when in all actuality it was 20' x 20' having got that way over the past fifteen years. To get the 20' x 20' permit, he had to have a tax map to justify it, so he came to see her. Is that a possible scenario?

Ms. Elliott stated it was her understanding that when Mr. Bratter came in, he was building a 20' x 20' structure. Whether or not it was that way before, she couldn't say. Her concern is what was there on April 1st.

SPEAKING IN OPPOSITION TO THE PETITION.

Chairman LeBlanc read a letter which Mr. James Hewitt, an abutter, had requested be read at the hearing as he had a long-standing commitment which prevented his attendance. In the letter, Mr. Hewitt maintained there were two fallacies, one of which was that the former garage was 20' x 20' and the other that the former garage encroached onto his property. He detailed his reasons for maintaining the size of the former garage was 11' x 18' and that there was no encroachment , referring to documents on file with the Planning Department and enclosing a site plan. He invited Board members to visit the site to observe physical evidence of his claims and concluded that "the facts of this case are cause for the ZBA to reject this petition as it is founded on deception and willful representation."

Attorney Shaines stood to address the question that had been posed to Ms. Elliott on whether Mr. Bratter was being properly assessed. They had shown the tax card for the property with the shed listed on the card so he wouldn't end up paying less than he should. He stated they had heard from several abutters – even from Mr. Hewitt's tenant next door as to the size of the building. Neighbors had also testified that this is an improvement to the neighborhood and yet he felt some members of this Board distrusted what they were being told. They heard from Corey Colwell who stated what he found under the buildings. He couldn't understand why there is an issue. He stated Mr. Hewitt takes issue, not only with the size of the building but with Mr. Colwell's survey, a professional survey, and submits a survey done for financing, not by a licensed surveyor. Attorney Shaines stated that should indicate where Mr. Hewitt is coming from. This has gone far enough and Mr. Bratter is entitled to the vote given to him at the last meeting and there should not be any reversal. He reiterated the people who had testified in favor of the petition and stated the City's own Building Inspection Department records showing building permits, not for an 18' x 11' garage but 19' x 19'. The Board should trust the City records. He stated they had gone to the Inspection Department and got the permits and, if that's not enough, then he guessed they couldn't prove their case. Their case shouldn't depend on what size was there, but on the issues set forth in the *Boccia* case and the issues that were approved at the first hearing and addressed again at this hearing

Mr. MacCallum stated that Attorney Shaines had presented them with a tax record dated 1994 and asked if the shed was on the subsequent records, to which Attorney Shaines responded that those were the cards that were in the Assessor's office. That shed wasn't there in 1994 because there was a building permit issued in 1989 and that shed was removed in 1989. Mr. MacCallum

stated he understood their position to be that the shed had been there continuously since 1994 and was still there as of February of this year.

Attorney Shaines stated that the building permit was applied for in 1989 and it was constructed in 1989. In response to Mr. MacCallum's question, he stated that the building, as stated on the building permit, was for essentially a 20' x 19' building, 380 s.f.

Mr. MacCallum stated that Attorney Shaines was aware that there was an issue of doctoring records and noted that particular item was one of the specific ones that had been altered.

Attorney Shaines challenged Mr. MacCallum to show him where the 380 s.f. had been doctored and objected, stating there was no indication that those records had been doctored.

Mr. MacCallum stated he had spent a good portion of the previous afternoon examining those original records and assured Attorney Shaines that they had been altered and the very figures Attorney Shaines had just touched upon were some of the ones altered.

Attorney Shaines stated he thought Mr. MacCallum was wrong and making an accusation that he won't and can't back up. He stated that the records came from the Inspection Department and that's why he asked for the building permits themselves.

Chairman LeBlanc interjected to ask Mr. Hopley to come down.

Mr. Rick Hopley stated he was the Building Inspector for the City of Portsmouth.

Chairman LeBlanc stated there were diverging opinions on the size of the property in question and asked Mr. Hopley if he had visited the property and made any measurements of what was there and is there now.

Mr. Hopley stated the only time he visited the property was in April of 2005 and there was no former structure there at that time.

Mr. Parrott stated that one of the issues is the size at any point in time and that he was looking at Building Permit #3530, dated 5-19-89, pg. 1 of 2. Going down through the sheet, the size of all proposed structures is listed and it says "Replacement same size as existing" and for structure #1, there are two numbers and it is crystal clear to him that there is a writeover on both numbers. It now says 19' x 19', to which Mr. Hopley agreed.

Mr. Parrott pointed out a number of corrections and apparent writeovers and noted that changes in other locations on the page were made by a cross-out and word(s) written in, but on the dimensions, clearly it was a writeover. On the rest of the applications, the changes were in a light hand, but on the dimensions, a heavier markover. Mr. Hopley stated "correct" to all.

Mr. Parrott asked what the Board could reasonably draw from this case where there is a change in dimensions under section 11, if any.

Mr. Hopley said he agreed with the analysis, but couldn't' speak for what had taken place.

Mr. Parrott stated he understood but it was clear to him that at least this permit had been altered in way he found unacceptable.

Mr Jousse asked if the item in question is the proximity of the left side of the garage looking from McDonough to the adjacent property – where the relief is being asked.

Chairman LeBlanc stated, "yes." When Mr. Jousse asked for the surveyor back, he stated they should finish first with questions for Mr. Hopley.

In response to questions from Mr. MacCallum, Mr. Hopley stated he had been with the department for 21 years and that the handwriting on the applications cited was not his. He also spent a lot of time looking at the original records. Often applications come in incomplete and inaccurate. When the staff reviews, these are realized and as more than likely in 1989 and even today, staff will ask applicants to better clarify information that may be missing or inaccurate. He stated it was his opinion that much of the entries were probably made by a since retired staff member in an attempt to assist in the accurate completion of the application. There is very similar penmanship on the other documents under zoning district and setbacks. It may have been an attempt to get an application that was more accurate and thorough.

Mr. MacCallum asked if he would be correct in inferring that it might also explain why there were three applications on the same property that year.

Mr. Hopley stated they were for repair of the garage. In the application Mr. Parrott talked about, which yielded the permit #3530, in the description, "refurbished" was substituted for "replaced." The subsequent permit that was issued cited "garage repairs." In the application that yielded permit #3753 was to replace garage roof.

Mr. MacCallum asked if there were any way to tell the amount of building coverage at any given point and time and Mr. Hopley responded that you would have to sum the values and compare to the lot size as, unlike today, there was no place to separately record. Today there is a staff review sheet on which to enter that sort of data, but that was not the case in 1989. There was no way to crosscheck the accuracy of the figures. Mr .Holden indicated they had a sample of the review sheet.

SPEAKING TO, FOR OR AGAINST THE PETITION

Mr. MacCallum asked a further question of Mr. Shaines which was whether he correctly understood them to say that the shed was missing from 1984 onward and Attorney Shaines corrected that to 1989. Attorney Shaines stated that the average person doesn't come in and check their tax cards.

Mr. Jousse stated his previous question for the surveyor could be addressed to Attorney Shaines. He indicated the photograph looking from McDonough Street and stated that what he was trying to establish is how close the back of the garage is to the property line.

Attorney Shaines stated the indication on the photograph was spring of 1990 and they suggest it was not in 1990 because the roof went off in 1989. Attorney Shaines asked Mr. Bratter to identify his garage.

Mr. Bratter indicated his garage on the photograph – the one with the circle around it. He questioned whether (the abutter) didn't want his property back and stated that his building sits where it sat before and he has a right to keep it where it was.

Mr. Jousse indicated he still had a question for the surveyor which was when they did their survey, they found that the left side of the garage was on or near the property line? Mr. Colwell indicated "yes." He said he had seen the photos Mr. Bratter and Mr. Shaines were just viewing.

Mr. Jousse stated the photograph shows a fence and the roof which is not that critical, although he estimated the building was somewhere around 17' wide according to the shingles. He asked if the fence is on or very near the property line and Mr. Colwell stated not on, but within an estimated 3'-5'.

When Mr. Parrott asked if he was retained to determine whether there was an encroachment, Mr. Colwell indicated "no." He believed it was encroaching from the results of his survey. He has the entire block recreated down through time and this plan before them was his opinion of where the property lines are based on extensive research.

Mr. Parrott asked if it was his opinion that the encroachment was only by this connector building and Mr. Colwell stated "correct.".

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

DECISION OF THE BOARD

Mr. Holden reminded the Board that the issue before them has little to do with past history and representations. The issue before them is whether or not there is sufficient evidence on which to base the granting or denial of the request before them and that request is for a variance as stated. That is the only issue the Board should be acting upon.

Mr. Witham made a motion to deny the request as presented and advertised, which was seconded by Mr. MacCallum

Mr. Witham stated, first, that this whole issue of 11' x 18' or the original size isn't affecting his motion. He believes it was 11' x 18' based on the aerial photo and that looking straight down, it is not a square structure. His biggest concern was having a 0' setback on a property line. This is too tight to allow for several reasons. In going through the analysis, his issue is not so much with lot coverage, but more an issue with the setback

He stated it was not in the public's best interest to have structures built right on property lines. He knows there is a 0' setback downtown, but there are mandates attached. With regard to special conditions, he did not see any hardship. Ten feet might be difficult to meet, but zero is

asking too much. Anyone performing maintenance on the building is forced to use the abutters's property to do so. Even though it is being advertised as a 0' setback, he assumed the foundation was zero and the footing would be on the abutter's property, which is not in the public's best interest.

While there are some special conditions on the property considering its size and the location of the previous structure, it doesn't give the applicant the right to simply replace the structure. Another big difference is that they often have very close setbacks for outbuildings and sheds and garages and on the aerial map you can see similar structures. Those are different from structures used for everyday living. If you're an abutter, there's a big difference from being up against a garage that doesn't have lights during the night or noise and smells coming from it such as from a kitchen. A living space has a much different impact. He felt it would diminish the value of the neighboring property on that side.

Mr. Witham stated that there are other reasonable methods to achieve the benefit such as a more reasonable setback. He also felt 20' x 20' was a large kitchen and you could achieve a kitchen without having a 0' setback. He added that it was not in the spirit of the ordinance in terms of light and air and enjoyment of their property. There are issues with maintenance and water runoff being dumped on the abutting properties. While it could be said that it's been there all along, this is a different use now and an opportunity to remedy. He didn't see substantial justice in allowing this right on the property line – maybe some relief is deserved here, but not zero.

Mr. Witham stated there were some people speaking to this petition about improvement, but they need to look to the person most directly affected and he thinks the value of their property will be diminished.

Mr. MacCallum said he seconded, but for different reasons. He agreed that the structure torn down was 11' x 18'. Mr. Shaines has said the shed has not been there since 1989 so Mr. MacCallum doesn't know why so much time was spent on that issue because it just confused everything. He stated he doesn't have trouble interpreting the aerial photo. The shed, if not exactly 11' x 18' was certainly closer to that than 20' x 20'. To him, lot coverage is an issue. At the time of the June 21st hearing, they granted based on the understanding that the prior structure was 20' x 20' and the Chairman looked at the tax map and compared to the plan and said it all added up to that measurement. His remarks satisfied the Chairman and Mr. MacCallum that this was a rebuild of a structure that was already there. Unlike Mr. Witham, he would be perfectly willing to let the applicant rebuild on the existing footprint or maybe modify a little bit if necessary. Whatever 11' x 18' comes out to in square footage, it 20' x 20' is almost a doubling of the coverage area and nearly doubling the maximum coverage specified. This is a drastic increase in coverage in an area that has already been developed. While the hardship requirement may be met, that's not the only requirement and to increase by that much in a locale which is already overcrowded is clearly against the spirit of the ordinance. If a request fails to meet even one of the *Boccia* points, they have to deny.

Mr. Parrott concurred that, regardless of the dimensions at any time, to ask for a zero lot line setback is pretty radical. In a crowded neighborhood, putting living space right on the lot line is not in the public interest. Putting a large connector right up against the lot line prevents anyone

from walking from front to back or doing maintenance without going onto the neighbor's property. *Boccia* talks about special conditions of the property but he can't find differences from others in area or hardship in the application. The ordinance is generally interpreted to foster light and air – this the opposite. They haven't heard expert testimony one way or the other on the value of surrounding properties, but he couldn't see how it wouldn't diminish to have a structure right on the property line.

Mr. Jousse stated he would not support the motion. The comments he made in June of this year are still valid. The applicant is trying to remedy a situation in which the garage was found by a survey to be encroaching.

A motion to deny passed by a vote of 4 to 2. Messrs. Jousse and Holloway voted against the motion.

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6) Petition of **Cynthia Caldwell, owner**, for property located at **147 Martha Terrace** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow: a) a 24' x 24' attached garage with a 10'4"± left side yard where 20' is the minimum required and a 27' 3/4"± rear yard where 40' is the minimum required, b) a 14' x 20' deck with a 27' 6"± rear yard where 40' is the minimum required; and, c) 19.9% building coverage for all where 10% is the maximum allowed. Said property is shown on Assessor Plan 283 as Lot 8 and lies within the Single Residence A district.

SPEAKING IN FAVOR OF THE PETITION

Cynthia Caldwell stated she had lived at 147 Martha Terrace since October of 1993. She wanted to clarify that there was an error on the submitted floor plan. What is labelled as the existing structure is actually the second story addition and vice versa. She described the proposed addition and stated the lot is currently in the Single Residence A district and most lots in her neighborhood are non-conforming due to that zoning. She listed the conditions creating a hardship on her lot, which were the differences between the requirements of the district and the existing dimensions of her property. If her lot were in the Single Residence B district, she would only need 3' feet of rear setback relief.

Ms. Caldwell stated it is her intention to remove both sheds shown on the site plan. The proposed deck would be built to the right of what is shown as the existing addition. This area is currently occupied by a 10' x 12' shed. The deck will not extend farther to the back than the existing structure. The proposed garage will be used for two cars and storage and the placement was chosen to allow light into the existing kitchen, to avoid problems with the ledge on the property, and reduce impact on the abutters. An area variance would be needed for any addition to the property and she believes granting the variance will not be contrary to the public interest. She stated the changes will enhance the neighborhood and noted that the abutters are not in opposition.

In response to questions from Messrs. Berg and Jousse, Ms. Caldwell indicated the waste system was septic and reiterated that both sheds would be removed and the storage moved into the garage.
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SPEAKING IN OPPOSITION TO THE PETITION
SPEAKING TO, FOR, OR AGAINST THE PETITION

With no one responding, the public hearing was closed.

DECISION OF THE BOARD

Mr. MacCallum moved that the petition be denied, which was seconded by Mr. Parrott. In his motion, he stated that relief from three requirements is too much relief and noted that the coverage would be doubled. He didn't see the hardship inherent in the property as it is typical of the neighborhood. The only stated hardship was the zoning itself.

Mr. Parrott concurred adding that 11,000 s.f. is not a large lot and additions would crowd it. They are asking for too much and redesign could bring their request more in line with the requirements of the ordinance.

Mr. Witham stated he would not support the motion to deny. While at first he thought it was quite a bit of relief, as he reviewed it, he felt it was well thought out and reasonable. The existing addition in back would be replaced with a new one and where there is a shed would be in-filled with a deck. The new element is a garage and there is no feasible way to have one without encroaching on the side setback. He didn't see any adverse effect on neighbors and, while he could see the lot coverage was doubling, the lot size requirement for the zone is based on one acre, four times the size of most of the neighboring properties.

Mr. Berg agreed, stating that, in the Single Residence A district, the neighborhood will never be conforming. Neighborhoods with these dimensional values are usually zoned Single Residence B. He believes the area is zoned Single Residence A to accommodate septic systems and these lots already have their septic. The proposal is appropriate for the neighborhood and the complimentary zoning district, which would be Single Residence B.

Mr. MacCallum took exception to Mr. Berg's statement that the zone was inappropriate for the neighborhood as that was not their call. The City Council establishes the zones and it is not their place to rewrite the ordinance. Their job is to deal with hard cases and, by granting exceptions, they would be starting a trend in the neighborhood which could lead to overcrowding. They have had three variance applications from Martha Terrace in the last few months.

A motion to deny failed by a 2 to 5 vote. Messrs. Berg, Holloway, Jousse, Witham and Chairman LeBlanc voted in opposition to the motion.

Mr. Berg then moved to grant the petition, as presented and advertised, which was seconded by Mr. Witham.

Mr. Berg stated he would like to incorporate into his motion the reasons he gave for opposing the motion to deny. Most significant is that he believes there is a hardship due to a unique set of circumstances affecting the homes on Martha Terrace where the zoning creates the hardship.

The way to remedy the big picture problem is for the neighbors to apply to the Council for a change, but they are there that evening to consider what is a special condition.

Due to the special conditions, it would not be contrary to the public interest. It is the only way to achieve the benefit and is in conformity with the neighborhood and expectations of the marketplace. In looking at competing neighborhoods and how they are zoned, the variance would be consistent with the spirit of the ordinance. It may enhance property values by bringing up the value of this property.

In seconding, Mr. Witham stated he would like to carry over his previous comments. He doesn't think the intent of zoning was to not allow homes to have a garage. The way the area is zoned, every house would need a variance.

A motion to grant as presented and advertised passed by a 5 to 2 vote. Messrs. MacCallum and Parrott voted against the motion.

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7) Petition of **Murat and Sandra Ergin, owners**, for property located at **251 Walker Bungalow Road** wherein Variances from Article III, Section 10-302(A) and Article XV, Section 10-1503(A)(D)(2) were requested to allow a 10' x 44' front porch with an 18.5' front yard where 30' is the minimum required. Said property is shown on Assessor Plan 202 as Lot 13-2 and lies within the Single Residence B district.

Mr. Witham stepped down from this petition stating he is a neighbor.

SPEAKING IN FAVOR OF THE PETITION

Mr. Murat Ergin stated he and his wife purchased 251 Walker Bungalow Road about six months ago. At that time, they thought about putting on a farmer's porch to improve the property, which is on a dead-end street. All the families spend a lot of time outside and they sit on the stairs to watch. The property was built 11years ago and the setback then was 20'. He was not clear when buying if the street was owned by the condominium association or by the City, but they liked the area and bought anyway.

He stated that the porch would improve the house and neighborhood and that all the neighbors supported the idea, attested to by a letter he provided the Board. They will never enclose the porch. He noted they will be more than 30' from the actual pavement.

In response to a question from Chairman LeBlanc, Mr. Ergin stated that the street is 50' wide.

Mr. David Witham stated that he resides at 238 Walker Bungalow Road and that when the property was on the market, he remembers thinking that it would be enhanced by a farmer's porch. With regard to the setback, the city has 20' of grass area so they would still be 30' from the pavement. An open porch doesn't encroach on light and air and would be nice for the neighborhood.

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

With no one rising, the public hearing was closed.
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DECISION OF THE BOARD

Mr. Berg moved that the petition be granted as presented and advertised, which was seconded by Mr. Holloway.

In making his motion, he stated that it would not be contrary to the public interest as the purpose of the zoning was not to eliminate front porches. The setback is to prevent structures from overpowering the property, but this will bring people, not structures closer to the road, which is a lightly travelled cul de sac. Although the lot line is where the measurement is taken from, the pavement is further away and he did not believe the pavement would be widened to a full 50'. The value of properties will not be diminished and the neighborhood spoke in favor. The hardship is that a porch is required, as supported by one neighbor who is an architect and there is no other way to accomplish this without seeking relief. The special condition is that this is a planned unit development and homes are built to a set of standards that is a little bit different than otherwise required by creating a common space.

Mr. Holloway stated that, in seconding, he had nothing to add, but would support the motion.

Mr. MacCallum stated he would not support. He was not surprised Mr. Berg was struggling for a hardship because there is none – nothing to justify being treated differently from others in neighborhood. They want to build a large porch and cut the setback almost in half. The zoning ordinance is supposed to be the rule and the variance the exception. He had looked around and did not see any other porches and doesn't see a porch as a necessity. There is nothing unique about the applicant's property that would justify being treated differently.

Mr. Parrott also stated the reasons why he didn't feel that the tests under the Boccia analysis had been met, including that there are no special conditions of the property or hardship requiring a variance. They cannot substitute their own thoughts and preferences for the rules laid down by the court. He also noted there did not seem to be interest in adding a porch on the right side of the house, which would not violate the setbacks.

A motion to grant as presented and advertised was denied by a tie vote of 3 to 3. Messrs. Jousse, MacCallum, and Parrott voted against the motion.

It was moved, seconded and passed unanimously to suspend the ten o'clock rule and continue the hearing.

8) Petition of **Adam H. and Francis Price, owners**, for property located at **127 Martha Terrace** wherein the following were requested: 1) a Variance from Article III, Section 10-302(A) to allow a 22' x 60' addition to the right side of the existing single family dwelling with: a) a 7' right side yard where 20' is the minimum required and b) a 6' x 28' covered connecting breezeway creating a total for both additions of 19% building coverage where 10% is the maximum allowed, and 2) Variance from Article II, Section 10-206 to allow two attached dwelling units on a lot where only one dwelling unit per lot is allowed. Said property is shown on Assessor Plan 283 as Lot 7 and lies within the Single Residence A district.

SPEAKING IN FAVOR OF THE PETITION

Attorney Pelech stated he would be representing the owners of the property and also appearing would be a representative from Ambit Engineering. The Prices have a daughter who wishes to come home and take care of her parents. They would like to take down the existing garage and outbuilding behind it and to place an addition no closer to the property line than the garage is now.

He stated it would be very small, only a 21'x22' garage, two small bedrooms and a family room/kitchen combination. He outlined the variances being requested as one for a side setback of 7.3', actually a further setback than the 7' for the existing garage. The second variance is for two units where one is allowed. The lot coverage of 19% is based on the existing 15,000 s.f. lot and this would decrease to 3% once the lot line relocation is approved. They do not have a problem if, in granting, the Board grants the variances contingent on the lot line relocation. If this variance is denied them, they will not go forward.

Attorney Pelech noted they are dealing with both a Simplex analysis variance and a Boccia analysis variance.

Dealing first with the setback variance, he noted there are special conditions dealing with the size of the lot. He cited the Simplex case where they were talking about the restrictive approach of zoning and Belanger v. the City of Nashua to make the point that ordinances should reflect the character of the neighborhood. Martha Terrace is one acre zoning but lots are one-third that size, or 15,000 s.f. lots. He pointed out as special conditions the ledge outcroppings on the first page of the submitted plan at an elevation of 78' 76', 72'. Shown on the second page, the lot drops off 30' in elevation at the rear from a 78' down to wetlands which are an elevation of 46'. This 32' drop makes it a difficult lot to locate any addition on. There is also a septic system on the lot and the lot is narrow.

They don't believe there is any reasonable alternative to the location. On the other side there would be the same setback request and it is not feasible to put the addition behind the ledge and septic. Regarding diminution in value, none of the neighbors have expressed concerns or objections. This would not be contrary to the public interest. There are still adequate light and air and room for emergency vehicles. There is no overcrowding of the neighborhood especially when you consider the expansion to a 90,000 s.f. lot.

Substantial justice would be done as the owners want to live there as long as they can by having their daughter come back and care for them. A lot of 90,000 s.f. certainly can accommodate two dwelling units and it is in the spirit of the ordinance because with the increase in lot size an addition would be more conforming than the existing garage and outbuilding.

Regarding the Simplex analysis, the lot would become 90,000 s.f. which distinguishes it from the surrounding lots and makes a second dwelling more reasonable. This is more appropriate than sub-dividing. If the Board reviews the departmental memorandum, they can see that there were many meetings with the Planning Department and, hopefully, this is the final step.

Attorney Pelech continued that it is not overcrowding to have two units on a lot that is over 2 acres and the restriction in the ordinance interferes with reasonable use considering the unique

setting of the lot size. The overall intent of ordinance is maintained. This will not interfere with the public interest or diminish the value of surrounding properties. He noted no neighbors objected. The back of the lot will be kept in natural condition rather than sub-dividing.

In conclusion, he felt the variance request meets both standards for a setback and a use variance. The lot coverage issue will go away when the lot line is relocated. He referred the Board for further questions to the letter of decision from the Planning Board granting preliminary approval at the meeting on June 16, 2005.

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. MacCallum made a motion to deny the petition, which was seconded by Mr. Parrott. He stated he would like to adopt his remarks made to the 147 Martha Terrace application and cited the application of Bacon v. Enfield to this petition. In this particular case, drastically increasing the square footage of a garage and placing it within 7' of the side setback is just too close to the property line, particularly in light of the fact that this Board had just granted a variance to a neighbor for a garage which will put the garages almost side by side. All these properties are too small for the building up and this would be a drastic increase in coverage. In response to Mr. Pelech's comment that the coverage issue would go away, he stated that the intensification of coverage is to the front of the property so, to practical effect, it will be just like 20% coverage. Having two dwelling units is out of character for that neighborhood.

In seconding, Mr. Parrott stated he is particularly concerned with changing the character of the neighborhood by, in essence, introducing a duplex into a single family neighborhood. It violates Bacon v. Enfield and he could see that making a change could be replicated down the road. The presence of ledge may present challenges but it's the same for other properties. He found the parking in the front unattractive and felt that some engineering could result in better design. He concluded that the Boccia standards had not been met.

Mr. Witham stated he would support the motion to deny. He was more concerned with the duplex aspect and, while he understands the reasons why the owners want to make the changes, he is not convinced that type of permanent solution does justice to the ordinance. He didn't see adding a duplex to the neighborhood as a reasonable request.

Mr. Jousse stated he would echo what had already been mentioned and referenced a similar situation where no additional kitchen was involved so it did not constitute a second dwelling. It is feasible to take care of elderly parents appropriately without seeking a variance for a second dwelling.

A motion to deny as presented and advertised passed by a unanimous vote of 7 to 0.

9) Petition of **Harold and Elizabeth Cummings, owners**, for property located at **39-41 Newcastle Avenue** wherein a Variance from Article III, Section 10-301(A)(2) was requested to allow conversion of an existing garage into a 4th dwelling unit in a district where all dwelling units shall be in one building. Said property is shown on Assessor Plan 101 as Lot 36 and lies within the General Residence B and Historic A districts. Case # 8-9

Attorney Pelech stated he was representing the owners and that, after the packet went out, he was asked to provide a parking plan which he submitted to the Board. He identified the property as being on the corner of Humphreys Court and Newcastle Avenue. There is an existing structure with three dwelling units and existing garage, detached from the main structure. Under the ordinance, up to 4 units would be allowed, but all in one dwelling. They propose to maintain the existing ones in the main house and add a carriage house type dwelling unit in the garage which would result in no expansion to the footprint. The only variance needed is to convert the garage.

Following the Simplex criteria, Attorney Pelech stated the public interest would not be affected by whether the fourth unit is in the garage or in the main building. The hardship is that there are two structures that can be converted but there is a conflict in the ordinance. The number of units is allowed and the lot meets the size requirements, but another section of the ordinance says you can't have dwelling units in two detached structures. The unique setting is that it is a corner lot with two existing structures, both of which are old enough to be converted under the zoning ordinance. It's a reasonable use as 4 units are allowed and the restriction interferes with this reasonable use. He continued by detailing the further points of the Simplex analysis that they believe are met by this request.

SPEAKING IN OPPOSITION TO THE PETITION

Mr. David Arrington stated he is an abutter across the street at 59 Newcastle and the property has been three apartments for close to twenty years. He can't believe it's suddenly a hardship to need a fourth apartment. This is not a carriage house, it's a garage, although it is not used for parking. To grant this would increase the density on the lot, diminish all of the properties in the area and change the character of the neighborhood. In response to a question from Mr. Berg, he stated he would rather see an expansion in the main building.

Mr. Robert Gunning, of 43 Humphreys Court submitted a letter for the record listing the criteria for granting a variance and why he felt they had not been met. Some points were that there was nothing unique about this property to justify a variance and surrounding properties would be adversely affected by, for one, the additional parking. He felt that if this were granted, others would feel entitled to transform a single family home with detached garage into a multi-unit complex. He also submitted a letter from Ms. Carol Stowe who opposed the proposal asserting it would alter the character of the neighborhood.

In response to questions from Mr. Berg, Ms. Tillman clarified that it is an average of 500 s.f. per apartment. The question is the location of the fourth unit.

The abutter at 33 Humphreys Court stated there is another way for the applicants to do what they want and still comply with the ordinance. Given the narrowness of Humphreys Court, this

would increase the density of the area. There seems to be a purpose in the ordinance for not taking up the other portion of a lot with dwelling units and leaving for other uses.

Mr. Harold Whitehouse stated that, at 58 Humphreys Court, he is the closest abutter. He submitted photographs depicting what he would be viewing and how close he was. He was concerned that the conversion of a detached garage could set a precedent and about the additional cars creating problems. Children come down through the right-of-way to Little Harbour School. Particularly if this property changes hands, it could be a serious situation.

Mr. Richard Sanpero of 22 Humphreys Court stated that the applicants argued that there was no relationship between the ordinance and the restriction on the property, but he felt density was a reasonable concern.

Mr. Gunning stood again to request clarification on the difference between conversion and a new dwelling unit. Ms. Tillman stated the lot area unit requirement would be different – 3,000 s.f. for a conversion and 5,000 s.f. for a new dwelling unit. You get the benefit of a lower lot area requirement on a conversion of an existing structure. Mr. MacCallum asked if they could do that with this property and Ms. Tillman stated the total lot area wasn't calculated as it had not been proposed, but perhaps Mr. Pelech or Mr. Colwell had the lot area.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Attorney Pelech stated that he believed the total lot area was 18,000 s.f.. He clarified that anybody in General Residence A, if they have a house built before 1980, can convert a single unit into a multi if they meet the requirements. This is not setting a precedent – they have the right under the ordinance, which only says you cannot increase the footprint.

With no one further rising to speak, the public hearing was closed.

DECISION OF THE BOARD

Mr. MacCallum moved that the petition be denied, which was seconded by Mr. Jousse. He stated the garage was too small to convert into a fourth dwelling unit and it would be out of character for neighborhood. He quoted from the decision in the case of Harrington vs. the Town of Warner where preservation of the character of a neighborhood should be used to deny variances where changes would be made in such a way as to disturb the character. He noted that various neighbors had spoken regarding the impact on the neighborhood. One had questioned why it was now a hardship requiring a fourth unit when there had been 3 units for 20 years. There would be a change if the garage were converted into another dwelling unit because currently the building does not look like an apartment.

Mr. MacCallum stated that, in this neighborhood, one of the purposes of the ordinance is to check against overconcentration. If the fourth unit were in the existing building, it would limit the number of people crowding the property and neighborhood. He also felt there was no hardship necessitating a variance.

Mr. Jousse, in seconding, stated that just because the ordinance states you can have 4 dwelling units doesn't mean you have to. There are no special conditions resulting in a hardship and making a residence out of a garage is not the intent of the ordinance. He also noted that a preponderance of neighbors are strongly against the proposal.

Mr. Parrott stated that the zoning restriction doesn't interfere with the reasonable use of the property – it just says do a certain way and put into the existing structure. The City only requires 3,000 s.f. of lot area per unit for a conversion as opposed to 5,000 s.f. for new so there is no hardship in denying. Other alternatives are readily available.

Mr. Berg stated that the previous week, they granted a very similar variance. He felt it would be better to take advantage of an existing, detached, structure rather than force another unit into the main building. The concern of the opposing neighbors was about a fourth dwelling unit, not the detached nature of that unit.

Mr. Jousse stated that two of the speakers specifically honed in on the detached garage.

Chairman LeBlanc stated that another issue is that Humphreys Court is a fairly narrow street and, even though allowed in the main building, moving traffic onto that street is a safety issue.

A motion to deny passed by a vote of 6 to 1, with Mr. Berg voting against the motion.

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III. ADJOURNMENT

The motion was made, seconded and passed to adjourn the meeting at 11:20 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary

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Minutes Approved November 15, 2005.
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