

**MINUTES OF THE BOARD OF ADJUSTMENT MEETING
PORTSMOUTH, NEW HAMPSHIRE
MUNICIPAL COMPLEX, 1 JUNKINS AVENUE**

7:00 p.m.

CITY COUNCIL CHAMBERS

SEPTEMBER 19, 2006

MEMBERS PRESENT: Chairman Charles LeBlanc, Vice Chairman David Witham, Steven Berg, Alain Jousse, Robert Marchewka, Duncan MacCallum, Arthur Parrott, Alternates Henry Sanders and Carol Eaton

EXCUSED: n/a

ALSO PRESENT: Lucy Tillman, Chief Planner

I. OLD BUSINESS

- A) Approval of Minutes – July 18, 2006
– July 25, 2006
– August 15, 2006

It was moved, seconded, and passed to approve the Minutes as presented.

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B) Petition of **Michael De La Cruz, owner**, for property located at **63 Congress Street a/k/a 75 Congress Street Franklin Block** wherein a Variance from Article XII, Section 10-1201(A)(2) is requested to allow a 10' two accessway to a below grade parking garage where 24' is the minimum required. Said property is shown on Assessor Plan 117 as Lot 5 and lies within the Central Business B, Downtown Overlay and Historic A districts. *This item was tabled at the August 15, 2006 meeting.*

Chairman LeBlanc advised that the applicants had requested that the petition be tabled.

It was moved, seconded, and passed to table the petition to the October meeting.

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C) Petition of **Abigail Khan-Cooper, owner**, for property located at **227 Park Street** wherein a Variance from Article II, Section 10-206 is requested to allow outdoor display and sales of artwork where such use is not allowed as a Home Occupation I or II. Said property is shown on Assessor Plan 149 as Lot 6 and lies within the General Residence A district. *This item was tabled at the August 22, 2006 meeting.*

Mr. Marchewka made a motion to take the petition off the table, which was seconded by Jousse, and passed by unanimous vote.

Ms. Tillman advised that the Planning Department had been working with Mr. Cooper and felt that the petition should be tabled until the October meeting to finalize the details. Mr. Cooper had agreed and been advised he did not need to attend that evening.

Mr. Witham made a motion to table the petition to the October meeting, which was seconded by Mr. Parrott.

The motion to table the petition was passed by unanimous vote.

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D) Petition of **Lafayette Limited Partnership, owner**, for property located at **775 Lafayette Road** wherein a Variance from Article IX, Section 10-906(A)(2) is requested to allow an additional 40.7 sf of attached signage for “abode home furnishings” where the existing signage on the property exceeds the maximum allowed. Said property is shown on Assessor Plan 245 as Lot 1 and lies within the General Business district. *This item was tabled at the August 22, 2006 meeting.*

Mr. Parrott made a motion to take the petition off the table, which was seconded by Mr. Sanders and passed by unanimous vote.

Mr. Parrott advised that he would be stepping down for this petition.

**SPEAKING IN FAVOR OF THE PETITION**

Attorney William Scott advised that NH Signs was unable to attend that evening. He distributed photographs depicting the existing and proposed signage. The owners had been a franchisee of Pier I since 1983, but were no longer affiliated and would like their own trademark on the awnings. It was necessary for them to seek a variance as the total signage for the entire shopping center was in excess. He noted that this store didn’t have as much frontage as the other stores in the center. The proposed signage would be consistent with the area and less obtrusive than some of the other signage. There will be no exterior illumination and the store was 110 yards from Lafayette Road. For these reasons, granting the variance would not be contrary to the public interest. Enforcement of the ordinance would create a hardship as they can’t add any signage for their particular store due to the total already in the shopping center. He stated the signage was consistent with the retail uses on Lafayette Road and would not diminish the value of surrounding properties.

In response to questions from Mr. Marchewka and Mr. MacCallum, Ms. Tillman stated that the sign would be larger than the previous Pier I sign. They had permission to replace the existing sign, but were asking for an increase in coverage on the awning. The problem was that the shopping center itself exceeds the amount of signage allowed.

Mr. Berg asked if they just wanted to put pictures or symbols on the existing awnings and Attorney Scott stated that was correct. There would be fluorescent light behind, internally illuminated.

Mr. Sanders asked if the existing sign would become somewhat larger.

Attorney Scott responded that it will not be larger than the signs in the shopping center and only larger than the former Pier I sign because of the icons on the ends.

Chairman LeBlanc asked if the lighting was going to be mounted on the building.

Mr. Carl Rouch, one of the owners responded stated that the portion that says “Abode” will be illuminated at night. They would also like to have the icons lit.

Ms. Tillman stated that the sign permit application did not indicate any lighting for the sign.

Mr. Rouch indicated that the Pier I sign was lit up the same way.

In response to further questions from the Board, Mr. Mike Rouch, another owner, stated the area of illumination will be less now because the lettering is just in the center. The awnings will lie at a small angle to the façade and the illumination is just behind the lettering and will not shine down on the sidewalk.

**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 made a motion to grant the petition as presented and advertised, which was seconded by Mr. Berg.

Mr. Marchewka stated the petition should be granted for the following reasons:

- This lower impact sign would be appropriate for the proposed location which has less building frontage.
- It is consistent with the spirit of the ordinance to allow a retailer proper signage while defining for the public the nature of the business.
- The signage is configured in a way that will not add to visual clutter or impact neighboring properties.

Mr. Berg stated that he sees this as four existing, allowed, panels with a word and four small pictures which does not have the visual impact of other signs. It was tasteful and simple and will appear even more subtle at night.

Mr. Jousse stated that, while he believes in brevity for signs, a lot of people would not otherwise be familiar with what Abode means. Pier I spoke for itself but this is a brand new label in the same location and it would be a benefit to the applicant and public to have knowledge of the store.

Mr. Witham stated he agreed with Mr. Jousse and can approve this variance because it does not add to visual clutter.

Mr. MacCallum stated he would not support the motion. The sign was perfectly adequate with no reason to increase its size. No one will have trouble finding this business.

Mr. Sanders stated that additional signage would be overwhelming and unnecessary. He will oppose the variance.

The motion to grant the petition was passed by a vote of 5 to 2, with Messrs. MacCallum and Sanders voting against the motion.

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E) Applicant Filed Request for Rehearing for property located at **36 Kent Street**.

Mr. MacCallum stated he was stepping down from this petition as he had not sat at the August meeting when it was heard.

Mr. Jousse made a motion that the Request for Rehearing be denied, which was seconded by Mr. Witham.

Mr. Jousse stated the only two valid reasons to grant a rehearing were if the Board made an error in the law or the applicant was presenting information that was not available at the time of the original hearing. Neither situation was present here.

Mr. Witham stated that the applicant had submitted a packet listing several reasons why he should be granted a rehearing, but he did not agree with the arguments. He felt the Board was thorough. The Board had been willing to give him 80% relief which was very reasonable, and the Board handled everything properly.

Mr. Sanders felt it was a unique situation and there was vacillation between some of the Board members. He felt it could be reheard.

Mr. Marchewka stated that he had voted for the variance but Board members as a whole disagreed. He did not see any new information or that the Board had erred, so he would not vote to rehear the petition.

Mr. Parrott stated he was fully satisfied that the Board fully understood the matter and thoroughly discussed everything. He looked to find something that makes the property unique and he could not. The request to put the deck almost on top of the neighbor’s house struck him as poor planning and something that should not be entertained.

Mr. Berg stated that he had also voted for the variance, but would not support the request for rehearing as he did not believe there were any misperceptions, misunderstandings or procedural irregularities. He did not agree with the bases for the rehearing request.

Chairman LeBlanc stated there was no new information and no procedural error.

The motion to deny the Request for Rehearing was passed by a vote of 6-1, with Mr. Sanders voting against the motion.



II. PUBLIC HEARINGS

1) Petition of **Perry Silverstein Revocable Trust 2001, Perry Silverstein Trustee, owner**, for property located at **10 Commercial Alley** and **Perry Silverstein and Kristin Magnus, owners**, for property located **off Penhallow Street** (lots to be combined) wherein Variances from Article XII, Section 10-1201(A)(2) and (3)(a) are requested to allow four nonconforming parking spaces to park one behind another and back into the street where such configuration is not allowed. Said property is shown on Assessor Plan 106 as Lot 9 & 10 (to be combined) and lies within the Central Business B, Historic District A and Downtown Overlay districts.

Before considering the petition, Mr. Berg questioned the need for a variance if parking was not required downtown.

Ms. Tillman stated that parking was required and, if it could not be provided, then there was an unmet parking need credit. Vehicles were not allowed to back out onto the street.

SPEAKING IN FAVOR OF THE PETITION

Attorney John P. McGee, Jr. referred to a pamphlet provided the Board by the applicant which had a picture of the property in question. The property was covered by a building until 1920 and has been open ever since. Since Commercial Alley went in around 1970, the property looked as it did now. There were three lots in the proposed subdivision. The plan was to combine Lot 9 (parking lot) with Lot 10 (small section of brick building). In order to even out the lots, a small strip from Lot 12 would be added to the proposed combined lot. Mr. Silverstein would construct a mixed use building and a portion of the lower floor would be used to expand the coffee shop. Commercial space would be on the other half, office space on the 2nd floor and residential on the 3rd floor.

Attorney McGee stated that, while the building could go to Penhallow Street as there was a zero setback, Mr. Silverstein did not want to do so because it would create a tunnel along Commercial Alley. He would only build 50% – 60% and leave the remaining area for four spaces of parking where currently there are seven. The City has determined that, under Article XII, if you have a new building or change of use, there was a requirement for conforming spaces. If the City is correct, they still can justify the need for a variance. They were attempting to create a reasonable use for their property and provide a public benefit by not building all the way to the road and improving the public landscape. They would reduce the parking area from 7 spaces to 4 spaces. The proposal can't be done economically unless they have 4 parking spaces. The spaces will be limited to residential use, which would unburden 4 spaces in the City's parking lot.

Attorney McGee stated that this was a small lot in the downtown area where every lot is unique. The ordinance was geared more towards open land and they don't have that luxury downtown. The parking layout that the City developed was geared toward commercial uses rather than residential uses. The hardship was the layout of the land. They were trying to keep less than half of it. This was a win-win situation for everyone and would not adversely affect anyone. The way the street is configured it was easier to back in and out of the parking spaces.

Mr. Berg asked why 4 parking spaces were necessary for the feasibility of the project.

Attorney McGee responded that the residential tenants had indicated that they need to retain parking on site or else they would no longer be able to live there.

Mr. Sanders asked if, in approving the plan, the Historic District Commission had indicated any negatives.

Attorney McGee stated that he was not present, but that Mr. Silverstein had worked very closely with the HDC to create a façade and building that was acceptable. The final vote was all in favor except one.

Mr. MacCallum asked several questions regarding the lot configuration and consolidation and the residential units as they relate to the parking.

Attorney McGee stated that the total residential units will be 4, adding one two bedroom unit, and two adjoining residences would be allowed to use the parking. If either of the adjoining lots were sold, some sort of easement would have to be worked out.

Ms. Tillman stated that there was one dwelling on Lot 10 and one dwelling on an adjoining lot that would use the lot as well. The petition was for Lot 9 and 10. Lot 12 was not a party to this request, but would also use the parking. Any parking deficiency would be paid as a parking impact fee.

Mr. Perry Silverstein stated that there were two one bedroom units on the third floor that would use the parking spaces. Egress is currently through the parking lot, which was why the tenants were adamant that they need to retain the parking spaces.

Chairman LeBlanc asked if they planned to have a dumpster and, if so, how would cars get in and out.

Mr. Silverstein replied they were planning one and he left enough room to accommodate it.

Mr. Jousse asked how the tenants would depart the parking area.

Attorney McGee stated they would back out onto Penhallow Street, or pull up on a no parking area, back in, and then exit forward onto the street. Mr. Silverstein indicated on his exhibit where the no parking area was and demonstrated how the exiting forward would work.

Chairman LeBlanc stated he felt there could be a problem as Mr. Silverstein had referred to Lot 12 and that lot was not advertised. If Lot 12 was to be part of the petition, it would have to be readvertised. Attorney McGee stated that the parking would be extended to the two units in Lot 12. If the Board felt that was procedurally incorrect, then perhaps they should have it tabled and readvertised.

Mr. Witham stated that the combination of Lots 9 & 10 would continue to control the spots and he felt the application was advertised properly. It didn't matter which residents were leasing the spaces. They have all the information needed to make a decision.

Mr. Marchewka stated he agreed. They were looking at a lot with 4 spaces on it and can vote on that. Messrs. Berg and Jousse concurred.

Chairman LeBlanc stated that he believed the number of bedrooms made a difference as it increases traffic and affects safety in the area.

Mr. James Albies stated he had been a downtown merchant for over 10 years and had used the parking lot many times. He backed out of the parking lot safely every single time. The whole area of the street is open and traffic was one way. He also stated that leaving the trees along Commercial Alley will enhance the area for the public.

Mr. Matt Jagman stated he was a local downtown business owner. He also had pulled in and out of the lot many times and it was not dangerous. He felt the whole project was an economic draw to the Alley.

Chairman LeBlanc referred to a letter from Mr. Robert Breneman of "G. Willikers!" that was on the desk for Board members.

**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. Berg made a motion to grant the petition as presented and advertised, which was seconded by Mr. Witham.

Mr. Berg stated that he could not think of any conforming parking downtown and it was very common on side streets for people to pull in behind their building. If anyone thought that was a problem, they would be speaking in opposition tonight. The desire to keep some parking is reasonable. Granting the variance would not be contrary to the public interest as they are reducing the parking spots from 7 to 4 so the property would be less non-conforming and the spirit of the ordinance would be maintained. Substantial justice would be done by allowing the applicants to utilize the property to its maximum potential. He stated that parking was a benefit to the property and

keeps cars off the streets. The property is long and narrow and it simply was not possible to put conforming parking on the lot due to its irregular shape.

Mr. Witham stated that his second of the motion was based on whether the proposal was safe or not and it had been demonstrated that these spots could be used safely. The street was one way and there was a sight line. As long as it's done safely, these small parking spots were part of the character of the City.

Mr. MacCallum asked if it would be agreeable to the maker of the motion to add a stipulation that the spots be used for residential purposes only.

Mr. Berg stated he felt the owner should be able to do whatever he wanted with the four spaces. A business might benefit from using the spaces during the day which would benefit the downtown.

Messrs Marchewka and Jousse agreed. There was also no way to enforce that stipulation.

The motion to grant the petition was passed by a vote of 6 to 1, with Mr. MacCallum voting against the motion.

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2) Petition of **Strawbery Banke Inc., owner**, for property located **420 Court Street** wherein a Variance from Article III, Section 10-303(A) is requested to allow an irregular shaped two story 2,724± sf building with the building facade flush with the property line abutting Washington Street where 20' is the minimum side yard. Said property is shown on Assessor Plan 104 as Lot 7 and lies within the Mixed Residential Office and Historic A districts.

**SPEAKING IN FAVOR OF THE PETITION**

Attorney John Daly stated he was representing Strawbery Banke, which was requesting an area variance to allow to them to build flush with the property line. He handed out color renderings to the Board, noting that the intended use was for a Collection Center for the museum. He stated the building would be in the public interest as it would be aesthetically be pleasing and conform to the area. It would enhance the appeal of the neighborhood. Because of the unique design and shape of the property, a variance was necessary to design a building consistent with the historic use and the design of surrounding properties. Granting the variance would result in substantial justice and a benefit to the City as the architecture will be more pleasing. There would be no diminution in the value of surrounding properties as the structure would improve the area.

In response to a question from Chairman LeBlanc, Attorney Daly confirmed that the fence in front of the location was outside the property line.

Mr. Marchewka stated that it looked like the edge from Washington Street was on the property line, but there was a jog in the property line and the left side of the building appeared set back.

Chairman LeBlanc stated the side property line requirement was 10'.



Ms. Tillman stated it was improperly listed as 20’, but this would be less nonconforming so it would be fine.

Mr. Jousse asked if the fence along Washington Street would be removed and Attorney Daly confirmed it would. Ms. Tillman added that some of it would be put back, but not in its current location. Mr. Jousse then asked if the doors on Washington Street were functional.

Mr. Yerdon stated there were two doors on the front façade on Washington Street. They were functional, but not available to the public.

**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. Parrott made a motion to grant the petition as presented and as shown on the plan, which was seconded by Mr. Jousse.

Mr. Parrott stated that, while there was room to do this differently and be in full compliance, this was a unique property. Were this in a different district, he might not be favorable. This, however, was a reconstructed old neighborhood and, to preserve its character and appearance, the placement of the building needs to be considered. It seems logical and sensible to place it as proposed because it would look in place. The public interest would be served by a new building that fit in well architecturally. The placement would help it fit into the historic zone, which features buildings that are right on the street and close to each other. To insist that it be positioned differently would take away from the value of the building. There was no better alternative that would make the building look like it had been there for a long time. There would be no diminution in property values and a private property owner had written a letter of support.

In seconding, Mr. Jousse, stated that Strawberry Banke was an asset to the City and tried to depict what was there in the 17<sup>th</sup> century. The dwellings were right on the street. This brand new building appeared to be a very nice rendition of what buildings were typically like hundreds of years ago.

Chairman LeBlanc pointed out that about half of the building is at least 5’ from the property line. There was only a small section actually on the line.

The motion to grant the petition was passed by unanimous vote of 7 to 0.

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- 3) Petition of **Joseph J. Zammit Revocable Trust of 1999, owner, Joseph J. Zammit Trustee, and Wendy Welton, applicant**, for property located at **580 Greenland Road** wherein the following are requested: 1) a Variance from Article II, Section 10-206 to allow two dwelling units on a lot in a district where only one dwelling unit is allowed, 2) a Special Exception as allowed in Article II,

Section 10-206(12) to allow a Home Occupation II (architectural office) with associated parking; and, 3) a Variance from Article XII, Section 10-1201(A)(3) to allow parking to be arranged with a residential parking space passing over a parking space for the Home Occupation. Said property is shown on Assessor Plan 258 as Lot 2 and lies within the Single Residence B district.

SPEAKING IN FAVOR OF THE PETITION

Ms. Wendy Welton stated that she is the applicant and is requesting changes to an existing house. The property had been taxed as a two-family since 1983. Apparently, at some point prior to 1983 an in-law suite had been added. She would like to add a door and have one of the bedrooms be part of a rental unit. There are repairs that need to be made to the house and she was seeking permission for a second unit as she would not need all the room, and also to fund the necessary repairs. Her second request was to have a Home Occupation at this location. She would take the back of the garage and convert it into an office, with one employee. She did not want to pave a significant portion of the yard for parking. There was a paved section on the front side. Her car could park in the driveway and she would add two business spaces in the front of the lot. She has walked the lot with both of her neighbors and felt they supported her proposal.

Ms. Welton stated the Home Occupation would not generate traffic as she only 2 ½ appointments per week. She sent around a copy of her appointment book for 2006 in support of this statement. She noted that the property was currently on a four lane road, soon to be a five lane. The property had been on the market for a very long time and she was the only offer because of the busy road.

In response to questions from the Board, Ms. Welton stated that she knew the second dwelling unit had been taxed as such by reviewing the tax card which Ms. Tillman had. The rental unit had separate heat and light, etc. Her intention eventually was to revert it back to accommodate her elderly father.

Mr. MacCallum asked Ms. Tillman what types of uses were permitted in Home Occupation II and Ms. Tillman read them from the ordinance. Ms. Welton required Home Occupation II because she would have an employee and clients coming to the house.

Mr. Michael Lalime stated he lived at 600 Greenland Road. They have 3 children and have spoken to Ms. Welton. Their only concern was the property line where there is no screening for privacy. They have children who play in the front yard, back from the road, and they talked to Ms. Welton about erecting a fence or barrier as she was backing her vehicle right up to the property line. He does not object to the business or the 2nd unit.

Mr. Parrott asked if he had any knowledge of the history of the property's use as a two-family house.

Mr. Lalime stated they had only been there for two years. He believed the owner rented the in-law apartment to 3 people in the 1990's but it had been a single family since he moved in next door. Their only concern was the vehicles coming up to the property line.

Mr. Witham asked if he would work with Ms. Welton to arrange this or did he need the Board to stipulate a fence?

Mr. Lalime stated he would like an agreement that there would be a fence.

When Mr. Parrott stated that the map showed an existing garage 11'7" off the property line, Ms. Welton stated they had walked it today and her property was actually wider than the plans that the Board had.

Mr. Craig Annis stated he lived at 606 Greenland Road and felt that Ms. Welton had some good ideas. Route 33 was not much of a neighborhood and a Home Occupation is more than conducive to the neighborhood. He remembered the owners renting the apartment in 1997 and 1998. He was looking forward to having someone restore this property.

Mr. Alan Vangile stated he lived at 75 Oxford Avenue. He originally was going to oppose this, but after listening to the presentation, he would be in favor. His only concern now was signage.

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

DECISION OF THE BOARD

Mr. Marchewka made a motion to grant the petition as presented and advertised, with the stipulation that two, 4' high, 24' long, sections of fencing be installed on the right side of the property, toward the front. The motion was seconded by Mr. Berg.

Mr. Marchewka stated that while on the surface this looked substantial, it was actually very reasonable. Clearly the property had been used as two dwelling units for a number of years and could continue to do so with no adverse effect on the surrounding neighborhood. The Home Occupation use as an architectural office was benign. He outlined the following reasons for granting the Variances and Special Exception:

- The property had been used as two dwelling units for over twenty years and could continue to be so used with no effect on the public or surrounding properties.
- By permitting what has existed, the variances would allow the owner reasonable use of the property.
- The property can support two units without presenting an issue of overcrowding.
- In this area, the proposed use of the property will create no traffic safety or other hazard to surrounding properties.
- An architectural office is a benign use which will not create excessive demands on services or change the essential character of the neighborhood.
- With the vegetation and layout of the property, there was no better way to provide the necessary parking.

Mr. Berg stated that he could not think of any other road in a residential neighborhood with four lines. This was a nice intensification that was still in harmony with a residential area. He felt it was a very good use of the property and didn't believe it would have any negative impact.

Mr. MacCallum stated he would not support the motion. While he agreed with some of Mr. Marchewka's remarks, he was opposed to the request for two dwellings on the lot. All of the houses

in that area were single family units on fairly large lots of property. Two units on this lot would be contrary to the spirit of the ordinance by adding to congestion. The door could be opened for large member families moving into each unit and over populating the lot. Because there had not been problems in the past did not mean there would not be problems in the future.

Mr. MacCallum also opposed the parking variance. Without the second dwelling unit, the applicant would not need the parking variance. The way she designed the property, it would look like a business in the middle of a residential district, against the character of the neighborhood and the spirit of the ordinance. He would support the Special Exception.

Mr. Parrott stated that the structure looks like a single family home. Just because people, in the past, had ignored the regulations of the City and gotten away with it doesn't justify the continuation of the illegal use. He didn't share the belief that because it was on a busy street it should be treated differently from other single residential areas on quiet streets. The property was directly adjacent to a house with small children. None of what had been proposed was consistent with a single family residence. This was an opportunity to return the property back to City regulations. He stated that the Home Occupation seemed somewhat reasonable as it was a low impact business.

Mr. Witham stated that there were other properties with multiple dwelling units and he referred to an abutting property where a second dwelling on a lot was allowed. He acknowledged that this area was Single Residence B, but there were only so many zones to work with and he felt this one area was unique and hard to compare to others zoned similarly. The property can support the two units and he didn't see over crowding as an issue. The Home Occupation was also not an issue.

Mr. Jousse stated he would also support the motion. The existing property looks like a single residence and, he felt, the proposed looked the same. There currently were separate water and electric services and the tax card identifies the lot as having two dwelling units. While someone in the past may have neglected to get a building permit, the applicant and present owners should have the benefit of the doubt. The Home Occupation use was low impact and would generate little traffic. Two or three cars parked on the property would not be noticed as the house is low and set back from a busy street.

The motion to grant the petition, with the stipulation that two, 4' high, 24' long, sections of fencing be installed on the right side of the property, toward the front, was passed by a vote of 5 to 2, with Messrs. MacCallum and Parrott voting against the motion.

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4) Petition of **Portsmouth Casey Home Association, and 1950 Lafayette Road A Condominium, owners**, for property located at **1950 Lafayette Road** wherein a Variance from Article IX, Section 10-908 is requested to allow a 88 sf freestanding sign having a 2' front yard where 20' is the minimum required. Said property is shown on Assessor Plan 267 as Lot 7 and lies within the General Business district.

Mr. Berg stepped down for this petition.

**SPEAKING IN FAVOR OF THE PETITION**

Attorney Alec McEachern stated that he was representing the condominium owners association. They would like to make a correction to their application. They had indicated a 2' front setback. However, they had conveyed a 12' easement to the State of NH Department of Transportation for the future widening of the road, so the actual property line was 14' in front of the entrance, not 2'. The applicants were seeking a variance to allow them to place an entrance sign 14' from the front property line. He noted the property has a restrictive covenant requiring the owner to maintain a 50' buffer zone adjacent to Lafayette Road in its natural state except for a driveway and sign. In developing this property, the NH Department of Transportation also required a 12' easement granted parallel to and adjacent to Lafayette Road in exchange for the issuance of a driveway permit. He noted that in its variance application, the applicant mistakenly stated that it had conveyed fee title to the 12' strip to the State.

A variance is needed as, due to the 50' vegetative buffer, the entrance sign was not visible to motorists on Lafayette until they were almost past the entrance. Due to the same buffer requirement, the visibility problem existed for the neighboring Department of Employment Security and Service Credit Union properties, both of which had entrance signs located within the 20' setback. Their field representative had measured signs down Route One. The proposed location for the sign on this property was 22' from the paved road, further from the road than all of the neighboring signs.

Attorney McEachern stated that, on the property, there was an office building in the front of the lot and a function building in the rear. There were two lanes of traffic heading south and, once past the lights, there was a two lane merge where the traffic becomes bumper to bumper. They were trying to avoid someone looking for the property, seeing the sign at the last moment, putting on the brakes and possibly getting read-ended.

Attorney McEachern stated that granting the variance would not diminish property values. They were next to a large track of undeveloped industrial land across from single family homes, from which only the posts and not the full sign would be seen. The intent of the ordinance was to allow the erection of signs in an orderly and safe manner. The destinations on the site are public destinations and granting the variance would assist the public in finding the location. The special condition of the property is the deed restriction requiring a vegetative buffer at the front of the lot. The benefit sought by the applicant cannot be achieved by another method as the only other way to achieve a clear line of sight would be to remove the trees, which was prohibited. Improved traffic safety and a safer entrance will result in substantial justice. The sign would conform to existing standards in the area. He apologized for the error in their applications and any confusion it may have caused.

Mr. MacCallum asked about the dimensions of the DES sign and the Service Credit Union sign.

Attorney McEachern stated he did not know.

Tillman stated that she made a correction to the application. The section involved was Section 10-908, not 10-907, as requested. Section 10-907 is multi-use shopping centers so she had advertised it as the regular sign chart. If this land was not deeded as noted on the plan, it would be helpful to

receive a plan that would reflect an easement area rather than a deeded area. The site plan should be updated as well as a corrected plan provided for the Board of Adjustment file.

In response to questions from Chairman LeBlanc, Attorney McEachern confirmed that, on the last two pages of their exhibit where they have the plywood mock-up of the sign, the sign was actually 14' from the front property line. He also confirmed that the oak trees would remain, protected by the deed restriction.

Mr. Sanders asked whether, if approved, this sign would be free and clear of any encumbrances.

Attorney McEachern stated there would be no other entrance signs on the applicant's property.

Mr. Parrott noted that the trees at the entrance have bands around them which often reflect trees being cut and asked for confirmation that they would remain.

Attorney McEachern confirmed they would.

Mr. John Walsh stated he was an abutter at 1991 Lafayette Road. While he did not have objections, he asked if there would be lighting on the sign. He would prefer not to see any.

Ms. Tillman stated the application indicated external lighting, with no hours of lighting listed.

**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. Witham made a motion to grant the petition with the stipulation that the sign lighting be turned off at 10:00 p.m., which was seconded by Mr. Sanders.

Mr. Witham stated that, while he had been concerned about a 2' setback, he was okay with 14'. Exhibit 3 shows a plywood sign which was set 8' further back than other signs on the road. He stated it was in the public interest, when going to a public function, to be able to find the location. The property was in a General Business zone and a sign was essential for the business to survive. The 50' vegetation easement creates a special condition in the property. There is no other way for them to have a sign without infringing on the front setback. Substantial justice will be done in allowing the public to find the business. He didn't see how the values of surrounding properties would be affected.

Mr. Sanders stated that Mr. Witham had covered the key points. He noted the safety factor was going to be improved by the way the sign had been planned. He supported including the lighting restriction in the motion.

Mr. MacCallum stated that a motion was usually approved as presented and advertised.

Chairman LeBlanc stated the applicant had corrected the record so it would be approved as presented.

Mr. MacCallum stated he would still be voting against the motion. In the absence of any data of the other sign configurations, the sign of the applicant appears to be larger. If so, it could be set further back. The building was closer to the road so it was more visible. He was concerned because the other side of the street was residential and also because the property had already received several variances, as indicated in the Planning Department memorandum. He felt the developer could have designed this so that a variance was not necessary. The hardship was self imposed.

Mr. Parrott stated he had seen no technical evidence that a variance was necessary for the sign to be seen. He didn't feel this was the way to present an engineering study. With some work by an engineer or surveying firm, they would have been able to make an informed decision.

There was a brief discussion among Chairman LeBlanc, Mr. Parrott and Mr. Witham about the value of the information provided in the photographs as opposed to survey reports.

Mr. Marchewka agreed, in principle, with Mr. Parrott that they should have had a lot more information. However, in this case he would support the motion because it was evident that there were trees in the way. He felt comfortable with the information provided by the photographs and can see the need to bring the sign out further to the roadway.

Mr. MacCallum stated that the proposed sign was listed as 88 s.f.. By eye-balling it, it appeared to be bigger than surrounding signs.

A motion to grant the petition with the stipulation that the sign lighting be turned off at 10:00 p.m. was passed by a vote of 5 to 2, with Messrs. MacCallum and Parrott voting against the motion.

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III. ADJOURNMENT.

The motion was made, seconded and passed to adjourn the meeting at 10:25 p.m.

Respectfully submitted,

Mary E. Koepenick
Secretary