

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

7:00 p.m.

CITY COUNCIL CHAMBERS

DECEMBER 19, 2006

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

EXCUSED: None

ALSO PRESENT: Lucy Tillman, Chief Planner

Chairman LeBlanc announced that Mr. Sanders would be sitting in on the petitions that evening.

A) Appeal from Decision of the Historic District Commission regarding property located at **7 Islington Street.**

Chairman LeBlanc announced that the Appeal had been filed that day. According to State statute, it would have to be dealt with within 30 days unless the Board voted to suspend further consideration until the January meeting.

A motion was made by Mr. Parrott, seconded by Mr. MacCallum and passed by unanimous voice vote to suspend further consideration of the Appeal until the January 16, 2007 meeting.

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B) Approval of Minutes – November 21, 2006

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

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C) Petition of **Mark B. and Chong Jou Kim, owners**, and **Mark B. Kim dba We Care Dry Cleaning, applicant**, for property located at **3002 Lafayette Road** wherein a Variance from Article IX, Section 10-908 was requested to allow: a) a 5' x 10' (50 sf) free-standing sign in a district where free-standing signs are not allowed and b) a 2' x 12' (24 sf) internally illuminated sign and 5' x 10' (50 sf) free-standing internally illuminated sign where only externally illuminated signs are allowed. Said property is shown on Assessor Plan 292 as Lot 13 and lies within the Mixed Residential Business district. *This item was tabled at the November 21, 2006 meeting.*

Mr. Jousse made a motion to remove the petition from the table, which was seconded by Mr. Parrott and passed by unanimous voice vote.

SPEAKING IN FAVOR OF PETITION

Attorney Loughlin stated that the applicants were asking for one variance for a free standing sign and a second variance to allow it to be illuminated. He submitted exhibits, including a tax map, indicating properties, the zoning line for the Mixed Residential Business district, and the 105' setback line. There also were photos of various approaches to the property and signs along Lafayette Road. He took issue with the staff recommendation which stated a sign was not needed as a dry cleaning operation was a destination, noting that there were few businesses along this stretch of Lafayette without a free-standing sign. The owner was one of the few on Lafayette Road that has built or added to a free standing building in the last 30 years who has abided by the setback and yet he has been told he cannot have a sign. The building is set well back and needs a sign, as from the north it cannot be seen until too late to turn in. He felt the department was dealing with the current use and not the setting of the building.

Addressing the criteria, he stated there would be no diminution in value as this was an attractive sign similar to those of other businesses along the route. The hardship in the property was that the building was set so far back and it was impossible to know what was there without a sign. It would help the public to know where to stop and turn for the business they are seeking. While there would be no gain to the public in having no sign, it would be a great benefit to the applicant to have one and be seen. He didn't feel that an internally illuminated, free standing sign in this area would be against the ordinance. This area was different from others similarly zoned where businesses are right on the street and traffic is slow. A hanging sign made sense there but not in this location. He stated that the externally illuminated signs could be difficult to read.

**SPEAKING IN OPPOSITION TO 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. Jousse.

Mr. Marchewka stated that this was a unique situation because the property was zoned MRB because of the neighborhood behind it. However, it was along Route One, which is 99% businesses and heavily traveled. The building was set back over 120' and difficult to see, particularly with the abutting properties. The public could identify the property without missing the turn into it. He stated the variance should be granted for the following reasons:

- On a heavily traveled roadway, a sign will provide a safe and timely alert to the public seeking this destination.
- The building is set back approximately 120' and blocked by abutting properties, making it difficult to see from the roadway.
- While the property is zoned Mixed Residential Business, it is situated along a route which is mainly businesses so a sign will not change the essential character of the neighborhood.

- In this location, an internally illuminated sign can create less glare and be easier to read than one that is externally illuminated.

In seconding, Mr. Jousse stated the building is well back, and hard to notice, from the street. This is one of those cases where signage is required.

Mr. Sanders stated he opposed the application. He felt people would seek out this location – a sign would make very little difference. He was concerned that it bordered a residential area.

Mr. MacCallum did not accept the contention that a sign should be granted because others had one. If this was a trend, they should request rezoning by the City Council. He didn't feel a free-standing sign was needed.

Mr. Parrott stated that, when he looked down the road, he saw a forest of signs which leads to a cumulative effect. The free-standing sign was huge and not needed and the sign on the building was larger than needed to present the message. He felt the petition could be reworked to be more friendly to the neighborhood.

Mr. Witham stated that he was reluctant to grant variances for signage, but felt this was reasonable. He agreed with Attorney Loughlin that there were other areas zoned MRB where it would be inappropriate to have an internally illuminated sign but he didn't see the impact, here, on any residences. This would not change the essential character of the area.

The motion to grant the petition as presented and advertised was passed by a vote of 4 to 3, with Messrs. MacCallum, Parrott and Sanders voting against the motion.

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**II. PUBLIC HEARINGS**

1) Petition of **Anne Elizabeth and Alan Gregg Weston, owners**, for property located at **43 Pray Street** wherein Variances from Article III, Section 10-303(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow: a) a 5' x 13' one story addition with a 3'± right side yard where 30' is the minimum required, b) a 5' diameter spiral stair with a 4'.6"± right side yard where 30' is the minimum required, c) a 5' x 15'10" first floor deck with stairs with a 5' right side yard where 30' is the minimum required and 10' rear yard where 20' is the minimum required, d) a 5' x 11' second floor deck with a 5' right side yard where 30' is the minimum required and a 10' rear yard where 20' is the minimum required; and e) 53.6±% building coverage where 30% is the minimum required. Said property is shown on Assessor Plan 102 as Lot 39 and lies within the Waterfront Business and Historic A districts.

Chairman LeBlanc announced that the abutter requesting the rehearing had withdrawn the request.

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2) Petition of **William N. Genimatas Revocable Trust, owner, Nicholas Genimatas, Trustee**, for property located at **599 Lafayette Road** wherein a Variance from Article IX, Section 10-901(E) was requested to allow 2 existing signs (29 sf and 14 sf) and 1 proposed sign (17 sf) to be located above the level of the eaves on a vertical wall in front of a pitched roof where signs are not allowed to be located. Said property is shown on Assessor Plan 229 as Lot 8 and lies within the General Business district.

SPEAKING IN FAVOR OF THE PETITION

Attorney James Noucas stated that the south end of the Bowl-A-Rama building was the subject property. Because of icing problems over the past few years, they extended the pitched roof forward to eliminate the open area above the entryway and create a consistent design with the rest of the building to the north. This was the second picture in their packet. They were requesting to move the existing signs seen in the first photograph up 3’ to 5’ onto the the new vertical wall erected to match that of the adjacent units to the north. He stated that the ordinance dealing with pitched roofs is intended to prevent a series of hodge podge signs, which is not the case here. They have a vertical wall above a pitched roof. He read a section from the ordinance dealing with signs providing orderly and safe advertising, which he stated this would do. He stated the property was unique as it sits far back from the highway. Moving the advertising up will make it more effective and visible and the signs will be all on one level. Property values won’t be affected by moving up the signs a little.

**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. Witham.

Mr. Marchewka stated that this was a necessary relocation of existing signs. The issue was locating the signs above the eaves, but building a vertical wall in front of the eaves took them out of the equation. Placing the signs on the vertical wall and creating a uniform look results in a more attractive building and more effective signage, which can only benefit the surrounding properties. Requiring signs below the eaves would look out of place and was not what the ordinance was designed to promote. The signs couldn’t be lower so there was no reasonable alternative.

Mr. Witham stated that what they were proposing was very much in line with the intent of the zoning. Moving the signs below the eaves would allow barely enough headroom underneath.

Mr. Sanders agreed, adding that at present, it is almost impossible to identify the businesses there.

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

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3) Petition of **45 Pearl Street Properties LLC, owner, and Paul Gallant d/b/a Mahalos, applicant**, for property located at 45 Pearl Street wherein a Variance from Article II, Section 10-207 was requested to allow 315 sf within the existing building for the storage of alcohol for a catering company in addition to client meeting space where storage is not an allowed use. Said property is shown on Assessor Plan 126 as Lot 30 and lies within the Mixed Residential Business district.

**SPEAKING IN FAVOR OF THE PETITION**

Mr. Paul Gallant stated he was the owner of Mahalos Catering. After conducting business here for five years, they had been unable to find another suitable space in the Portsmouth area and moved to Kittery last year. They still handle a lot of events in New Hampshire and need a storage space acceptable to the Liquor Commission. This space would be ideal, providing an area for a storage locker cabinet and room to meet with clients.

In response to questions from Board members, Mr. Gallant described his operation. They would pick up 3 to 4 boxes from the liquor store prior to each event and get a truck beer delivery once or twice a month. The truck would pull up on Hanover Street where there was an alley and stay 10 minutes at the most. They were located at the back of the building and all entrances could be locked. They could not use a rental storage unit alone as the Commission requires them to have a telephone number and public access.

**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. MacCallum made a motion to deny the application, which was seconded by Mr. Parrott.

Mr. MacCallum stated that there was no hardship associated with the property, only the applicant’s particular circumstances. There were other places in the state that would satisfy the requirements of the Liquor Commission. When the variance was granted for this property last year, there was a lot of concern regarding noise and parking. By imposing restrictions, the Board was willing to live with the parking situation as it was only for occasional functions. This would be an ongoing business active during business hours. Deliveries would be on a regular basis and impact an already troubling parking situation, affecting the public interest. He adopted the reasoning in the Planning Department’s recommendation.

Mr. Parrott stated that they had a long discussion the previous year on the effect of noise in a compact area. They granted a variance for a function hall, but not for a mini warehouse or storage, which he saw as incompatible uses. He felt the applicants would be bringing liquor back after events, which could be late in the evening. The restriction on hours was imposed on the function hall to avoid such an occurrence and protect the residents.

Mr. Jousse added that he did not think this location was appropriate for the storage of liquid spirits.

The motion to deny the petition was passed by a vote of 6-1, with Chairman LeBlanc voting against the motion.

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4) Petition of **Scott D. Healey and Emily A. Miller, owners**, for property located at **58 McDonough Street** wherein a Variance from Article IV, Section 10-402(A) was requested to allow a 7’ x 9’ shed with: a) a 0’± left side, a 5’± right side yard, and a 0’± rear yard where 5’ is the minimum required in each instance, and b) 47.5%± building coverage where 35% is the maximum allowed. Said property is shown on Assessor Plan 138 as Lot 38 and lies within the Apartment district.

SPEAKING IN FAVOR OF THE PETITION

Mr. Scott Healey stated that he would like to address the hardship in their property, which is the lot size and configuration. When they purchased the property a few months ago, there was a shed that was not usable. They did not realize they had to have a permit and replaced the broken down shed in the same location with an attractive structure. This is shown in Pictures 1 and 2. This is the best location for the shed as, if they complied with the setbacks, the shed would be in the middle of the yard. He pointed out that the house is already over the coverage limit, which is typical of the neighborhood.

In response to questions from the Board, he stated the shed fits against the fence, which is on the lot line, he believes, and does not belong to him.

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. Sanders made a motion to grant the application as presented and advertised, which was seconded by Mr. Parrott.

Mr. Sanders stated that the shed was attractive and would not be contrary to the public interest. The variance was needed due to the size of the property, leaving no other location in which to place the shed. He didn't feel that property values would be diminished by the replacement of a broken down structure with an attractive, new one.

In seconding, Mr. Parrott stated that the request for a 6' x 9' shed was minimal. This is a very small lot, protected from the other properties by fences. With the placement of the house on the lot, use is made of all the square footage and, with such a small property, outside storage becomes more important.

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

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5) Petition of **Betsy Patterson Rivers, owner**, for property located at **42 Cabot Street** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow: a) an irregular shaped 390± sf two story addition with a 9.7'± right side yard where 10' is the minimum required and a 9'3"± rear yard where 20' is the minimum required, b) a 9.5' x 14' one story three season room with 3.5' x 8' stairs with a 5'8"± rear yard where 20' is the minimum required; and, c) 39.6% building coverage where 25% is the maximum allowed. Said property is shown on Assessor Plan 135 as Lot 49 and lies within the Apartment district.

**SPEAKING IN FAVOR OF THE PETITION**

Mr. Richard Grimes stated he was the agent for Ms. Betsy Patterson Rivers. They were trying to design something within the lot footprint and somewhat proportionate to what is there now, while

trying to minimize the impact on setbacks and costs. He outlined the reasons the owner was building to accomplish her needs rather than moving.

Chairman LeBlanc asked what the current coverage was without the addition and Ms. Tillman responded that it was 25.34%, going to 39.6% with the addition.

**SPEAKING IN OPPOSITION TO THE PETITION**

Ms. Deborah Mayer stated she lived at 68 Cabot Street and was unclear about the hardship in the property as she felt they were only trying to increase the value of their house. She gathered it was a large addition , with only 6’ to the abutter in the rear. She noted there were drainage issues in the back yard between their houses and was worried about the impact of the addition.

**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 deny the petition which was seconded by Mr. MacCallum.

He stated that this increase in lot coverage would be an overintensification of the lot. While he recognized that the area was tight and a lot of properties exceeded limits, this was extensive, affecting light and air. He felt the intended uses of the additional rooms were more of a luxury rather than relieving a hardship. He was also concerned that, with granting such a great deal of relief, the house would no longer fall under the affordable housing category, which would not be in the public interest. The house functions as a home right now and these extra spaces were not necessities.

Mr. MacCallum stated that the amount of relief was contrary to the spirit of the ordinance. This would greatly increase coverage in an already overcrowded neighborhood. He stated that the hardship, if any, was self created as the applicant purchased the property with full knowledge of its restrictions.

Mr. Sanders agreed, stating that the larger house also presented a detrimental situation to fire and emergency services.

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

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6) Petition of **Steven F. and Anne B. Collins, owners**, for property located at **230 Park Street** wherein the following were requested: 1) Variances from Article III, Section 10-302(A) and Article IV, Section 10-401 (A)(2)(c) to allow 252’± L-shaped front porch with: a) a 3’± front yard where 15’ is the minimum required and b) 32.3 % building coverage where 25% is the maximum allowed; and, 2) a Variance from Article IV, Section 10-401 (A)(2)(c) to allow a 24’2^{3/8}” x 30’2^{3/8}” second story and attic with a full front dormer and rear dog house dormer on an existing building having: a) a 12’± front yard where 15’ is the minimum required, b) a 9’± left side yard where 10’ is the minimum required , and c) a 13’± rear yard where 20’ is the minimum required. Said property is shown on Assessor Plan 149 as Lot 49 and lies within the General Residence A district.

SPEAKING IN FAVOR OF THE PETITION

Attorney Timothy Phoenix stated he was speaking on behalf of the applicant and that he had additional information to present to the Board.

Chairman LeBlanc indicated he could pass it out, but, with no time to look it over, it would be used as back-up to his presentation.

Attorney Phoenix stated page one in his packet shows a tax card and the rest are pictures. He indicated the plan on display which was a part of the Board's original packet and showed the site plan and elevations. The top shows what is existing, with the proposed highlighted. The bottom section shows the two forms of relief requested, including the intention to remove the deck entryway and create a farmers porch along front. They had started their plans back in September when Mr. Collins met with the Inspection Department. He noted that, at that time the requested vertical expansion would have been approved without a variance but that has changed with the recent ruling of the Board of Adjustment.

He noted that the variance for increasing lot coverage from 28.1% to 32.3% was due to wrapping the porch around. The porch was also closer to the lot lines because the lot line slopes. The essential project is really not being brought closer. They simply wanted to take off the roof and go up as they could have done in the past without a variance and finish it off with a covered porch. He pointed out the walk-down landing on the plans and noted the proposed deck would not jut out farther than existing landing. He also pointed out photographs of other homes in the neighborhood with similar additions and porches and submitted a sheet listing the signatures of abutters who support the proposal.

Addressing the criteria, Attorney Phoenix stated that the addition and porch would not result in a diminution in values as it was consistent with the area and the nearest abutters have indicated support. Property values may actually increase. He listed some of the aims of the ordinance, stating that these additions would be consistent as they were essentially staying in the same footprint. The hardship was a lot of roughly 4700 s.f. and any addition up or out would require a variance and there was no reasonably feasible way to accomplish what was needed for a growing family. He felt that denial would be an injustice to the applicants who got caught in a change in interpretation and had, with a reasonable expectation, already spent thousands on the plans.

Mr. MacCallum noted that Mr. Phoenix had said there was not going to be a change in footprint, but the departmental memorandum had indicated it would extend further into the front yard.

Ms. Tillman stated that Attorney Phoenix had said the existing house would not extend, but the l-shaped porch in front will increase building coverage, which is an increase in the footprint. There was a small entry deck there now, shown on A-1. That would be removed and replaced by a farmers porch that wraps around and comes closer to the lot lines. It was not simply a matter of a roof added.

In response to questions from the Board, the builder, Mr. Jeff Halldorson, stated that the height of the building currently was just under 24' and, with the new addition, would be 32' to the peak of the house, an increase of 8'.

SPEAKING IN OPPOSITION TO THE PETITION

No one rose.

Mr. Parrott questioned where the 3' dimension shown on the plan ended and where the proposed right hand corner of the porch was in relation to the sidewalk and property line. After some questions and discussion about the sidewalk, curbing and the rock wall, Mr. Collins stated that the front property line was about a foot in front of the rock wall toward the street. The porch would be built to the same depth as the current entryway, but extended in width so that the corner of the porch would be 3' from the estimated property line.

When Mr. Parrott asked if a formal survey had been done as the property line location seemed a little unclear, Mr. Collins indicated they had found pins at the back, but none in front. They measured from the back pins to the front to determine the property line.

SPEAKING TO, FOR, OR AGAINST THE PETITION

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

Mr. MacCallum stated he would like to vote on the two variance requests separately and made a motion to deny variance request 1) (a) and (b), which was seconded by Mr. Parrott.

Mr. MacCallum stated that granting the request to build the porch would be contrary to the spirit of the ordinance. The purpose of building coverage and setback requirements was to prevent overcrowding and allow light and air. The front porch would expand building coverage and hug the property line on Park St. He could see no hardship as a porch is not living space, but a luxury with too high a cost as far as the impact on the neighborhood.

Mr. Parrott stated that the porch presented a problem, not the least of which was an ill defined lot. It was clear that any cars parked along there would practically be on top of the proposed porch. 3' was not much space even if there were a sidewalk.

The motion to deny variance request 1) (a) and (b) was passed by a vote of 4 to 3, with Messrs Jousse, Marchewka and Witham voting against the motion.

Mr. Parrott made a motion to grant variance request 2)(a), (b) and (c), as presented and advertised, which was seconded by Mr. MacCallum.

Mr. Parrott stated that the addition would not affect the footprint of the building, coverage, setbacks or the neighbors, so would not negatively impact the public interest. It was in the spirit of the ordinance to allow the applicants to upgrade their property as long as the neighbors were protected.

Further addressing the criteria, he stated that, with the size of the lot and the orientation of the house, there was no way to expand on the ground and building up was consistent with the neighborhood. No neighbors had spoken against the petition and surrounding property values would, if anything, increase.

Mr. MacCallum stated that this vertical expansion was in keeping with the character of the neighborhood, where most homes had two stories.

Chairman LeBlanc stated that he felt the structure would actually be a three story building as they were going to expand into the attic with dormers. A massing on the corner, where this property sits, affects light and air and he cannot support this vertical expansion of a non-conforming structure.

Mr. Witham agreed. He felt the result would be a three story structure, encroaching on a setback, with a stronger presence than others in the neighborhood. He would find it more palatable if the dormer were on the rear side.

Mr. MacCallum stated he believed they were told the height was only going to increase 8’

Chairman LeBlanc agreed that was what had been stated, but, in looking at the plans, he found it hard to put 8’ on top of the existing roof and come up with what they have proposed.

Mr. Witham stated that he thought the applicants were talking about the peak of the building, but he didn’t think 8’ was a good measure considering the full shed dormer.

Chairman LeBlanc asked if the applicant could provide some clarification.

Mr. Halldorson referenced picture 5, stating they were only going 8’ above the existing peak and, to all extents and purposes, this was a two story building.

There was additional discussion between the Board and applicants regarding the details of the proposed construction and whether they represented a two story with a dormered attic or a three story.

After the discussion, Chairman LeBlanc stated his objection still stood and asked the applicants if they needed the dormers on the third floor.

Mr. Collins responded that not having a dormer would significantly reduce the needed living space.

Mr. Witham stated this was a 22’ wide dormer, which was almost a third wall, not just a dormer for head room. He had no problem with the dog house dormer.

The motion to grant variance request 2(a), (b) and (c) was passed by a vote of 5 to 2, with Messrs. LeBlanc and Witham voting against the motion.

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7) Petition of **Helen I. Garvey Living Trust, Helen I. Garvey Trustee, owner**, for property located at **518 New Castle Avenue** requesting an Equitable Waiver as allowed in NH RSA 674:33-a (Equitable Waiver of Dimensional Requirement) to allow a condensor and a portion of a retaining wall 97.17’ to 95’ 3” from mean high water where 100’ is the minimum required in Article III, Section 10-301(7)(7)(a). Said property is shown on Assessor Plan 205 as Lot 3 and lies within the Single Residence A district.

**SPEAKING IN FAVOR OF THE PETITION**

Attorney Jack McGee stated he was representing the owners of the property. They had some survey work conducted which indicated that there might be some encroachments under the State wetlands ordinance, involving the pool house on the property. While the landscape artist was working with the State, she determined that it was likely that the condensers and retaining wall around them encroached on the City's mean high water line. The Garveys found out in October and this was brought to the attention of the City. They were now seeking an Equitable Waiver.

He passed out plans which were the same as those originally submitted, but on a smaller scale, along with an affidavit. He noted the area in question was almost dead center on the plan. The initial plans had not shown setback lines, only the area requirements with which the State deals. The encroachment shown on the plan indicates that on the side towards Portsmouth, the condenser unit retaining wall extends 2.83' into the buffer zone, whereas on the side toward Sagamore Creek it is 5' more or less. He stated that the error was completely innocent. The City fully inspected the property when it was built and also missed the problem.

Attorney McGee stated that the affidavit he had just provided was from Mark DePiero, of DePiero LLC, who could not attend that evening. In the affidavit, Mr. DePiero states that during 2000 and 2001, he oversaw the construction of the home on this property and installation of the retaining wall and condenser units which are now found to be within the 100' setback. He attests that he calculated that they were beyond the 100' setback and this was a miscalculation. He attests that he had no reason to believe his measurements were incorrect, but it had been recently discovered that an encroachment exists. The Garveys would have had no knowledge at the time of any encroachment. Attorney McGee stated that Mr. DePiero offered an explanation of how the measurement could be off. Referring to various points on the site plan, he stated that Mr. DePiero thought the indentation caused by the tide might have caused his confusion in measuring. Mr. DePiero estimated the cost to relocate the condensers to be in excess of \$34,000. He stated that the Garveys were totally unaware of the situation.

Attorney McGee read from the statute the findings that the Board must make in order to grant an Equitable Waiver of Dimensional Requirement and indicated how this case satisfied those findings. The error had not been noticed until just recently, at which point the applicants brought it to the City's attention. This was a good faith error in calculation and not the outcome of ignorance of the law. He noted Mr. DePiero stated in the affidavit that he had made a mistake in calculation. The violation does not constitute a nuisance or diminish properties or affect current or future uses. He stated there were no abutters and the condensers were shielded by shrubbery. Moving them would probably make them more noticeable. Finally, the cost to correct the error would be \$34,000, far outweighing any possible public benefit.

He believed that the application he filed stated it was 95' to Sagamore Creek and the departmental memorandum mentioned 95'3". If the Board voted to grant the petition, he requested that it be granted as 95' more or less.

Mr. Witham stated that the property had been well surveyed with professional site plans. Where the corners of the house almost touch the 100' buffer zone and the contractor knew he had to put in the condensers, why didn't the contractor use the site plan to decide where to put them.

Attorney McGee stated that Mr. DePiero had told him there were piles of dirt all around and some flags that were in the wrong place. There was a lot of disturbance and it was difficult to hit it with as much precision.

**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. Parrott.

He stated that, in looking at the overall plan, he could see how the contractor, if looking at the flags, could misinterpret that the condernsers would not encroach. Given the size of the project and budget, he couldn't believe someone would deliberately encroach into the buffer zone which could create some real problems. He felt it was an honest mistake. The applicants had applied for other permits, locally and with the State. If they knew this would encroach, they would have applied for this as well.

Mr. Parrott stated that Attorney McGee had provided a reasonable explanation for the findings needed for an equitable waiver.

The motion to grant an Equitable Waiver was passed by unanimous vote of 7 to 0.

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8) Petition of **Society for the Protection of Forests, owner**, for property located at **400 Little Harbor Road** wherein a Variance from Article IX, Section 10-908 Table 14 was requested to allow a 12 sf freestanding sign with: a) a height of 7' where 3' is the maximum allowed, and b) a 5 1/2' front setback where a 15' front setback is the minimum required. Said property is shown on Assessor Plan 203 as Lot 8 and lies within the Rural district.

SPEAKING IN FAVOR OF THE PETITION

Mr. Jack Savage stated that he was the Vice President of Communications for the Society. They would like a variance to erect a sign that would be more visible to the public. The Board had granted them a change in use variance last spring, which has resulted in more public traffic. Regulations require a sign to be no more than 3' high. There's a stone wall along the entrance and, if set 15' back and no more than 3' high, the sign would be difficult to see. The property line does not go out to the edge of road, but cuts along wall so they can't meet the 15' setback requirement. They would like the sign to sit just high enough over the wall so it can be seen by traffic.

He stated there would be no impact on surrounding properties. A visible sign would actually be more convenient for abutters and enhance traffic safety because people would not be driving up and down road looking for the entrance. The existing stone wall at the entrance is a special condition that prohibits them from complying with height restriction. Removing the wall was not reasonably feasible nor substantial justice. They have created pullout areas in compliance with a Site Review request and the proposed sign placement would not interfere with those or with snow removal.

In response to questions from the Board, Mr. Savage indicated that they had worded their request to be up to a height of 7’ because the measurement could be affected by the grade. It might be slightly higher than the giant ball at the entrance, which was 5’, due to the elevation change. The sign will be as shown in the drawing and the existing sign would be removed.

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 as presented and advertised, which was seconded by Mr. Sanders.

Mr. Witham stated that the hardship was the location of the historic stone wall which should be preserved. The following were the reasons for granting the petition:

- The sign will direct visitors to this public access site.
- The configuration of the driveway and stone wall require a sign of this height and there is no other location that would meet its purpose.
- A visible sign directing traffic into the site will eliminate the safety hazard of cars turning around on a narrow road.
- The property values of surrounding neighbors will not be diminished.

In seconding, Mr. Sanders stated that the planned location would direct the public away from the private residences.

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

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Mr. Jousse made a motion to dispense with the ten o'clock rule, which was seconded by Mr. Witham and approved by unanimous voice vote.

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9) Petition of **Elsie B. Tuttle, owner**, for property located at **76 Sunset Road** wherein a Variance from Article III, Section 10-302(A) was requested to allow a 4’ x 8’ one story addition to the rear of an existing dwelling unit creating 20.4%± building coverage where 20% is the maximum allowed. Said property is shown on Assessor Plan 167 as Lot 1 and lies within the Single Residence B district.

SPEAKING IN FAVOR OF THE PETITION

Mr. Carl Brage stated that his sister, Mrs. Elsie Tuttle, has lived in the house for 25 years. Her washer and dryer are in the basement and going up and down stairs was a problem for her. She would like to stay in the home and the simplest way would be to put a 4’ x 8’ extension off the kitchen for the appliances. The extension would be hidden between the garage and the porch.

Chairman LeBlanc asked if the only problem was lot coverage and Mr. Brogie responded, “yes.”

**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 as presented and advertised, which was seconded by Mr. Parrott.

Mr. Witham stated this was a very minimal request of .4%. The addition was also tucked into a u-shaped area which will have no impact on density, light and air or any of the other factors affecting abutters. The hardship in the property was the undersized lot and there was no other way to build the extension. The spirit of the ordinance would be served by the preservation of light and air and justice would be done by allowing a long time resident to continue to live there. With the placement, the homeowner has taken the necessary steps to protect surrounding properties.

Mr. Parrott stated he had nothing to add.

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

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10) Petition of **Blair W. and Janet B. McCracken, owners**, for property located at **212 Pleasant Street** wherein a Variance from Article IV, Section 10-402(B) was requested to allow a 13’ x 22’ one story detached garage with a 1’± right side yard where 10’ is the minimum required. Said property is shown on Assessor Plan 109 as Lot 26 and lies within the Mixed Residential Office and Historic A districts.

**SPEAKING IN FAVOR OF THE PETITION**

Attorney Peter Loughlin passed out a revision to the plan that had been provided with the application. This had been submitted and advertised asking for a 1’ setback where 10’ is required. Their request was modified to a 8’ setback where 10’ is required. In the interest of time, and unless the Board wished otherwise, he asked that the Board members rely on the letter he had submitted in which he outlined the reasons why they felt a variance should be granted and how the criteria were met. He noted that it was necessary to pull the garage as far from the home as possible so that cars backing out were not blocked by the home. The garage had been moved closer to the home and to the street and the amount of relief was a small 2’ triangular area

**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**

In asking for the decision of the Board, Chairman LeBlanc stated that the variance request was for an 8’ setback where 10’ is required.

Mr. Marchewka made a motion to grant the petition as presented, which was seconded by Mr. MacCallum.

Mr. Marchewka stated that, with the revision, this had turned into a minimal request. The only issue was the lot line, which created the hardship as it was an odd shaped lot. The garage would, otherwise be a conforming structure. With the angle of the lot, there was nowhere else to put the garage. He saw no impact on the public or surrounding properties. This would be consistent with the spirit of the ordinance as it meets all requirements except for a minor intrusion into the side setback.

Mr. MacCallum stated he agreed and had nothing to add.

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

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III. ADJOURNMENT.

Before the motion to adjourn, Chairman LeBlanc thanked all of the members for the services rendered in the past year.

The motion was made, seconded and passed to adjourn the meeting at 10:20 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary