

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

7:00 p.m.

CITY COUNCIL CHAMBERS

JANUARY 16, 2007

MEMBERS PRESENT: Chairman Charles LeBlanc, Vice Chairman David Witham, Carol Eaton, Alain Jousse, Duncan MacCallum, Arthur Parrott, Henry Sanders, Alternate Charles LeMay

EXCUSED: None

ALSO PRESENT: Lucy Tillman, Chief Planner

Chairman LeBlanc congratulated Ms. Carol Eaton and Mr. Henry Sanders on their appointment as full Members of the Board and welcomed Mr. Charles LeMay as a newly appointed Alternate.

NEW BUSINESS

Election of Officers

Mr. Jousse made a motion, which was seconded by Mr. Parrott, to re-elect Mr. Charles LeBlanc as Chairman and Mr. David Witham as Vice-Chairman.

The motion was passed by unanimous voice vote.

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**OLD BUSINESS**

A) Approval of Minutes – December 19, 2006

After a minor clerical correction, a motion was made, seconded and passed unanimously to accept the Minutes as corrected.

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

Mr. MacCallum made a motion to grant a rehearing, which was seconded by Mr. Witham.

Mr. MacCallum stated that the Board had been advised by the City Attorney to approach the request in the same manner as a motion for rehearing on a Board decision. In reviewing the petition and minutes of the proceedings of the Historic District Commission, he felt there was sufficient substance to warrant a hearing.

Mr. Witham stated that there seemed to be some blank spaces in the information. In a rehearing, he would be interested in hearing how the Commission arrived at their decision, noting there were quite a few work sessions and a site walk prior to the “red flags” raised of the project being too big in scale. The Board had not seen plans and there seemed to be some confusion on boundaries and jurisdiction. More detail should clarify these points.

Mr. Parrott stated that he had read the transcript of one of the meetings as well as the minutes and felt there were issues of substance. A building in this location this would be a gateway building. What is built there would be important and define that corner. He felt it was worth everyone’s time for the issue to be heard before a new group.

Mr. Jousse stated he would support the motion, but was concerned that the Historic District Commission had recommended that the applicant have extra work sessions and the applicant had declined. This should be addressed at any rehearing.

A motion to grant a rehearing was passed by unanimous vote of 7 to 0, with the rehearing to be held at the February 20, 2007 meeting of the Board of Adjustment.

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### III. PUBLIC HEARINGS

Chairman LeBlanc announced that he would be stepping down for this petition and Mr. LeMay would be sitting.

- 1) Petition of **Jeannette E. Hopkins Trust, owner, Jeannette E. Hopkins, Trustee**, for property located at **39 Pray Street** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow a 203 sf irregular shaped one story addition to the rear of an existing single family dwelling (after demolition of an existing ell) with a 2’4”± right side yard where 10’ is the minimum required. Said property is shown on Assessor Plan 102 as Lot 38 and lies within the General Residence B and Historic A districts.

#### SPEAKING IN FAVOR OF THE PETITION

Ms. Anne Whitney handed out additional material to the Board, stating that they were proposing to take down an existing rear ell and rebuild in that footprint plus part of an existing raised patio, infringing into the left yard setback. Reviewing her exhibits, she indicated on the elevation plans the part of the patio which will be removed and the dash line showing the existing ell.

Ms. Whitney stated that the applicant’s physician recommended that she live on the first floor, which was difficult as there were only two 9’ 11” x 14’ rooms in an existing structure of 19’ x 35’. There were two very large chimney passes that take up a good portion of the space. The existing ell is used for appliances and for access to the back yard. The first floor bathroom is tucked under the stairs, making access difficult. They were trying, in a minimum of space, to create an addition which would

accommodate a bedroom with a ¾ bath while maintaining rear access. They were trying to avoid having to come for a variance, but mitigating circumstances make any alternative they considered cost prohibitive. Sheet 2 of 3 on her original plans shows the only access to the basement. The addition would need a full basement. They would take out the patio and rework access. She stated there really was nowhere else to site the addition because of the existing chimney mass. They need to come out the extra four feet into the setback to allow the minimal changes they need.

Ms. Whitney stated that they will be blocking one kitchen window of the abutter. When they started their planning, the immediate abutter was appearing before the Board and they believed that the window in question was being eliminated. There's also an upstairs window of the abutter which will be minimally impacted. She had drawn an illustration of the addition with a 6/12 pitch. This could be dropped to 4/12, lowering it 14" or 15", which would allow more of a view from that window.

She reiterated that they were trying to make the addition as small as possible while still creating a functional space. The applicant would have a space to use for her activities and another for sleeping. The applicant would like to be able to continue to use the house as she has and not be limited to living in two rooms, which would happen with one floor living in the current layout.

She stated that the abutting property had received some variances several months ago, noting that buildings were very close in the neighborhood. She believed granting this application would be in the spirit of the ordinance as other similar ones had been granted and, while continuing a nonconformity, the value to the applicant of allowing her to live in the house outweighed any impact on the abutting property.

In response to questions from the Board, Ms. Whitney indicated the ages of the applicant's and abutting properties and reiterated that they could drop the pitch, shown on plan 3 of 3, to 4/12. It would still block the upper window but only by a few inches. The first floor window, that they had thought was going to be eliminated, would still be blocked.

Mr. Jousse asked why the proposed addition couldn't be moved to the left requiring less setback relief and allowing light and air to the neighbor's window.

Ms. Weston stated they would have to remove all the masonry from the two massive fireplaces which go right up to the kitchen bay. That was why access had to be along the side wall.

In response to questions from Mr. LeMay, Ms. Weston stated that the masonry did not block the current stair and indicated on the plan the location of the existing door. The kitchen was in the bumpout area and access could not be there as there was countertop throughout.

### **SPEAKING IN OPPOSITION TO THE PETITION**

Mr. Alan Weston stated he lives at 43 Pray Street and was a direct abutter, a good description as there is only about 30" in between. He referenced his and his wife's request for variances and their hearing at which the applicant had spoken about the walls of their proposed addition blocking her light and air. They have withdrawn their request and now there is a request for an addition on 39 Pray Street which will block their window. He stated they had never planned to remove the kitchen window. He also disagreed that the proposal was the only option and referenced the set of plans on record which were submitted in 1989 and had an addition on the left side of the house. This had been denied

because of light and air. He stated the new addition would diminish the value of our property and increase operational costs because they would have to use more heat and more lights.

Ms. Anne Weston asked if everyone had received a copy of their submission in opposition to the petition. She drew the Board's attention to three photographs, one taken from the abutter on the other side looking at their windows and two from their kitchen window looking out at the applicant's property.

Mr. Witham confirmed that the Board had received the packet.

### **SPEAKING TO, FOR, OR AGAINST THE PETITION**

Miss Jeannette Hopkins stated she is the owner of 39 Pray Street and recalled that when she discussed her plan to move down to the first floor with the abutters in early October, they said they would not oppose it. They discussed each other's plans after which the abutters had submitted their plans in support of their petition for a variance. Just before Christmas, their attorneys came to an agreement when the abutters dropped their second floor request if she would agree to accept their renovations. In response to a statement in a submittal from the abutters regarding her petition, she stated that she wants to continue to live and work in her home.

### **DECISION OF THE BOARD**

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

Mr. MacCallum stated he had no problem with what the applicant wanted to do except that it would be at the expense of the neighbors as she can only accomplish this by blocking their kitchen window. Granting the variance would be an injustice to the abutters and would be contrary to the spirit of the ordinance as one of the purposes of coverage requirements is to ensure neighbors are not overcrowded and there is no overdevelopment. Other than the blocked window, he had no problem because of the time the properties had existed so closely together and he felt there would be adequate light and air. He was not convinced, however, that the purpose could not be achieved by some other reasonably feasible method.

Mr. Parrott stated this was a well designed addition for a good purpose. In this case, unfortunately, it could only be built at the expense of neighbors. The spirit of the ordinance allows a homeowner to do what they wish provided someone else is not penalized by their making their house more convenient. There would be justice to one at the expense of the other, which was just a function of how close the houses are. Blocking the window would reduce light and air.

Mr. MacCallum added that, while he understands the applicant's position, the law is clear that any hardship supporting the variance must be with the land.

Mr. Jousse stated he would support the motion for the reason he had stated earlier.

Mr. Witham stated he had expected to support but his concern was the window location and the impact on the abutter. Looking out from the abutter's window at a wall 30" across would result in a diminution in value. While the petition may have met some criteria, they have to meet all five.

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



2) Petition of **Eugene LaCroce Jr. and Kimberly LaCroce, owners**, for property located at **68 Brackett Road** 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 40' two story single family dwelling to be built on an existing foundation after the demolition of the existing home with a 26'± front yard where 30' is the minimum required, a 9'± left side yard where 10' is the minimum required and an 8'± right side yard where 10' is the minimum required, b) 6' x 7' front landing including steps with a 19'± front yard where 30' is the minimum required, c) 4' x 9' entry porch including steps with a 28'± front yard where 30' is the minimum required and a 4'± right side yard where 10' is the minimum required; and, d) all structures creating 22.67% building coverage where 20% is the maximum allowed. Said property is shown on Assessor Plan 206 as Lot 21 and lies within the Single Residence B district.

Mr. Witham stepped down for this petition.

**SPEAKING IN FAVOR OF THE PETITION**

Mr. Eugene LaCroce stated he was appearing on behalf of himself and his wife who had lived at the address for 10 years. In reading the Legal Notice, he felt it sounded like a lot of relief, but it doesn't really reflect what they are asking for due to the existing nonconforming structure and a lot which predates zoning. They would like to replace a 1950's style ranch with a two-story home on the existing foundation. They would move the stairs and remove the side entry, replacing it with a smaller landing. The side deck would be moved to the rear. There would also be a one-story bumpout for eating. They had shared their plans with the neighbors who gave their support.

He stated they would be maintaining some existing nonconformities but improving lot area coverage by going to 22.67%. The existing front setback of 19' may be a little improved because the bottom step doesn't have to be counted. When the City redid the street, they added a 4' strip of land so it is more like 30' to the foundation. The existing left setback, abutting Little Harbour School, would remain unchanged. On the right side, they discovered from a neighbor's survey that the existing deck sat on an easement which brings the deck 4' from the property line instead of right on it. The front and left will be virtually the same, the right will have a shrinking deck and lot coverage will be improved.

Addressing the criteria Mr. LaCroce stated that the addition would be in the public interest by reducing lot coverage and adjusting setbacks, improving the balance on the lot. The colonial style would fit in well with the neighborhood. The special conditions creating a hardship are the location of the existing foundation and the substandard lot size. They could not achieve the benefit another way except by tearing down the existing foundation. The back is wet and would require drainage if they had to move back. It would be in the spirit of the ordinance to allow an improvement in keeping with the neighborhood and improve the setback and coverage. To deny the variances would be a greater loss to them than any gain to the public and the values of neighboring properties would be enhanced.

When Mr. Jousse commented that the setbacks were going to be the same, Mr. LaCroce stated except for the side decking and the lot area coverage. Mr. Jousse asked why they could not improve the setback by moving the orientation of the steps into the mudroom. Mr. LaCroce stated that, in the totality of what they were doing, the neighbor most affected would benefit by the removal of the extra deck area and the orientation of the steps.

There was some additional discussion among Mr. LaCroce and Board members clarifying the easement, describing abutting properties, and indicating the lot coverage was going from 24% to 22.67%

### **SPEAKING IN OPPOSITION TO THE PETITION**

No one rose.

### **SPEAKING TO, FOR, OR AGAINST THE PETITION**

Mr. David Witham identified himself as a Board member. He was not sitting for this petition but was speaking as the architect for the project. He indicated that, in developing the plans, they tried to minimize the impact on the neighbor. With regard to the stairs on the right hand side, access to the house was still needed. With the driveway location, the left side setback and the grade difference, it made sense to locate it where it is, but they tried to keep the landing as small as possible. The design is in keeping with other colonials in the neighborhood in style and height. They designed no dormers to, again, minimize impact.

In response to a question from Chairman LeBlanc, he stated the overhang on the front step came out 18”.

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

### **DECISION OF BOARD**

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

Mr. Parrott stated that this request was fairly straightforward. The house would be built on the same foundation and be similar in style to neighborhood homes. It was an advantage that, instead of the right-hand deck sitting on the property line, there would be a 4’ wide set of steps. In essence, there would be approximately 12” to the edge of the easement and then another 20’ to the neighboring house. In terms of the ordinance, the houses were spaced adequately. The front remains essentially the same and the deck on back is in a better place. Lot area coverage will decrease slightly from 24% to 22.67%. The location was unusual because there is lawn in back to the school parking lot and lawn to the edge of the road. The only impact would be on the next house and that should be improved.

Mr. Sanders stated that there would be minimal changes, bringing the home more in line with the neighborhood. Surrounded by open land, it would not be contrary to the public interest and values, if anything, would be improved.

Mr. Jousse stated that Mr. Witham’s explanations addressed any reservations he had about the steps on the right side.

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

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3) Petition of **Theodore W. Weesner and Janet L. Schofield, owners**, for property located at **36 Kent Street** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow a 364 sf deck with: a) a 2’2”± right side yard where 10’ is the minimum required and b) 32.7% building coverage where 25% is the maximum allowed. Said property is shown on Assessor Plan 113 as Lot 38 and lies within the General Residence A district.

SPEAKING IN FAVOR OF THE PETITION

Attorney Amy Blanchard stated that the applicants had appeared previously before the Board. She indicated that the rear deck was attached to the home when purchased in 1989. Although not indicated in City records, they have an affidavit from the previous owner stating it was built in 1982 and that the City was advising him at that time. Recently, a section of the deck had rotted and caved in. For safety reasons, the deck needed to be rebuilt, but Mr. Weesner was under the impression that he didn’t need a variance if he rebuilt the deck with the same footings. They thought it would make sense to build an extra 2’ over to reach the fence and fill an awkward space. He should have applied for a building permit, but didn’t. Once the City made it clear one was needed, he applied in July of 2006.

When he came before the Board in August, he had removed most of the deck as he felt it was a danger. At that time, he had direct abutters speaking in favor of his request with no one against. She believed one concern of the Board was about a seeming liquor cabinet which had been explained as a work of art with colored glass bottles.

Attorney Blanchard stated that the applicant contacted them after his petition was denied. They filed an appeal with the Court as they had not been present and wanted to ensure that his rights had been protected. They were there that evening as they were a little unsure whether the Board was denying him simply the variance as a 2’ extension or whether he was being denied permission to rebuild the deck in its entirety in the same dimensions.

She stated that, at this point, all they are requesting is to reconstruct the deck in the exact same dimensions without the 2’ extension. It was their position that this was a prior nonconforming structure and Article IV, Section 10-401(2)(b) would allow the applicant to rebuild the deck in its exact same dimensions because it had rotted over time due to natural causes.

Attorney Blanchard stated that the proposal would not affect other properties as it was a replacement with better materials and the neighbors most directly affected have stated that the deck is more aesthetically pleasing. It was in the spirit of the ordinance to allow the property owners reasonable use and to remove a rotting deck for safety reasons. The special conditions of the property included a house built 2’ from the property line. Because there were sliding glass doors flush with the wall, as she indicated on the plan, it was necessary for the deck to keep flush or the doors would open to a 6’ drop. She stated that the neighbors on that side had built a large home, after the deck was built, which

came close to the deck. Due to existing doors, there was no other reasonable place to put the deck. Denying the variance would be an injustice for all the previously cited reasons.

In response to questions from Mr. Sanders and Mr. LeMay, Attorney Blanchard indicated on the plan where the extra 2' extension was on the plan which was the difference between the August request for a 376 s.f. deck and the current one for 364 s.f. She pointed out dimensions adding up to the lot width, noting that there was a bumpout on the back and the dimension from the house to the side property line may be a little larger further down the house on the plan.

Mr. LeMay asked if there was any dispute that the deck existed in 1982.

Attorney Blanchard stated all they had was an affidavit from a previous owner who thought he had obtained all the necessary permits. She would provide a copy for the Board.

In response to questions from Mr. Witham, Attorney Blanchard stated that her reference about not being able to move the deck due to the sliders was in reference to the house being 2' from the lot line. At the other end, there was a regular door. Mr. Steven Weesner indicated their locations on the plan.

Mr. Witham stated he was asking because it was a substantial size deck and he wondered if there were any way to make it smaller.

Mr. Parrott stated that, with respect to the previous request for a variance, he remembered specifically asking if that slider which was toward the 2' opening was an operational door and the answer was "no", and that was a factor in their deliberations. Another factor, as Mr. Witham mentioned, was the very large size of the deck, particularly considering the size of the house. Those were things they considered very carefully and Attorney Blanchard had alluded that the Board may not have liked the conceptual glass, but that was a minor consideration. He was concerned that future owners or visitors could look over the fence. Whether the present neighbors like it or not was not the issue as side setbacks are to provide privacy. He didn't want to leave the impression that this Board was casual in just saying they didn't like the decorative glass. That was not the case at all. They took a great deal of care to address all the issues, including the nature of those sliders. When I said do they operate, or are they just windows, the answer was they were just windows – not operational.

Attorney Blanchard commented that the applicants built the fence to ensure privacy and an individual who would build a fence of this scope is not going to infringe on their neighbors.

Mr. Parrott stated he was not looking at present occupants, but at the property and the zoning for future owners.

Ms. Eaton stated that her decision in denying the original deck was that it was a zero setback.

**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. Jousse made a motion to grant the petition as presented and advertised, which was seconded by Ms. Eaton.

Mr. Jousse stated that it was in the public interest to allow the applicant to replace an existing unsafe structure in the same location with better material. There was a special condition in the location of the house with respect to the property line. The deck was continuing the line of the dwelling creating a 2’2” setback. There was no other place this deck could be located because of doors or sliders on back of house.

Ms. Eaton stated that this area was fairly built up and the configuration fairly typical. The house was already at the same setback. The special conditions were that the deck was there over 20 years. It was attached to a nonconforming, older home and would be the same distance from the property line. Replacing in kind would be in the spirit of the ordinance, she felt and justice would be done by allowing the rebuilding of a failing deck. The property would be upgraded and values should not be diminished.

Mr. Witham stated that he would support the motion, although he felt the deck could be made smaller. He felt if the plan were drawn to scale, the deck would not appear so dominant. It is less than half the width of the property, but looks bigger.

Mr. MacCallum stated that, while he shared the concerns of Mr. Parrott, he would support the motion.

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

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4) Petition of **Wayne D. Moore, Murry Hill Properties Inc, owner**, for property located at **304 Maplewood Avenue** wherein Variances from Article II, Section 10-207 and Article IV, Section 10-401(A)(1)(b) were requested to allow the 2<sup>nd</sup> floor(1,150 sf) to be used for storage as accessory to the first floor medical supply business. Said property is shown on Assessor Plan 140 as Lot 7 and lies within the Mixed Residential Office district.

Chairman LeBlanc stated that the applicants had requested that the petition be tabled to the next meeting.

A motion was made by Mr. Witham, seconded by Mr. Parrott and approved by unanimous voice vote to table the petition to the February meeting.

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5) Petition of **Portsmouth Farms LLC, owner, and Starbucks Coffee Co, applicant**, for property located at **1855 Woodbury Avenue** wherein a Variance from Article IX, Section 10-908 was requested to allow the **ADMINISTRATIVE WITHDRAWAL** property line where 20’ is the minimum required setback and b) 45.25 sf of aggregate signage where 37.5 sf is the maximum allowed. Said property is shown on Assessor Plan 215 as Lot 11 and lies within the General Business district.

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6) Petition of **Dorothy Katz M 19 Trust, owner**, for property located at **880 Islington Street** wherein the following were requested: 1) a Variance from Article XII, Section 10-1204 to allow 10 parking spaces to be provided where 14 parking spaces are required for a proposed retail furniture store with related storage and 7 parking spaces are required for the existing office space and, 2) a Variance from Article XII, Section 10-1201(A)(3)(a)(4) to allow the existing ten parking spaces to back out onto Islington Street where parking is required to egress a site in a forward direction. Said property is shown on Assessor Plan 166 as Lot 51 and lies within the Business district.

### **SPEAKING IN FAVOR OF THE PETITION**

Attorney Jack McGee stated he was representing Dorothy Katz as Trustee of the Revocable Trust. The property was developed by Mrs. Katz and her husband in early 1960 and built according to the code at the time. The configuration has not changed since then. The unit on the left is 70% of the premises and the 30% side is now Labor Ready. He outlined a brief history of the property. In 1999 and 2000, similar variances were requested. The parking does not meet current requirements. Their measured drawing shows the layout of 10 parking spaces in the front. Labor Ready would be allotted 3 and the furniture store 7. If they had maximum usage, they would need a total of 21 spaces, allotted 7 and 14 spaces respectively. The other variance is for back-out parking spaces. Commercial spaces are supposed to exit nose-out. This was discussed with the Planning Department and it was decided they should come for a variance.

Addressing the criteria, Attorney McGee stated that it would be in the public interest to continue the use of a commercial building used as such for over 40 years. Keeping it vacant would not help the City or the neighborhood. The 70% vacant space would not be usable if these variances were not granted. Having a tenant helps the neighborhood, property and the public. The only way to increase parking would be by tearing down the building, which would be an economic waste and meet the hardship requirement test. The property was zoned business and the designers of the current ordinance must have thought that keeping it in its then current form would be consistent with the ordinance or the City would not have retained the zoning as business. He stated that it would not be just or reasonable to force the property owner to give up 70% of the property. The value of surrounding properties would not be diminished. The zone abuts a residential neighborhood and the area is better with a tenant.

He stated that there had not been parking problems in the past and that, with the layout of Islington Street in that section, the backout situation is not as dangerous or uncertain as it is in many commercial areas. Because of the Islington Street travelway, there is a line-of-sight that allows a safer back-out.

Mr. Sanders asked if the owners had ever looked at 100% usage for the retail furniture business.

Attorney McGee stated that the building itself is divided into two units and was always used commercially as two units back to the 60's. It's hard to find a tenant for this type of operation. He doesn't know if it would be practicable but Labor Ready has a lease so it would not be viable in any event in the short-term.

Mr. MacCallum asked Ms. Tillman if, should a single business fill the entire space, could they have parking without a variance?

Ms. Tillman stated that the parking requirement was 1 space per 600 s.f. of gross area for furniture. No other use allowed by the ordinance would require less. She explained that the products are larger and take up more space so the building has to be correspondingly larger.

### **SPEAKING IN OPPOSITON TO THE PETITION**

Mr. Tim O'Brien stated he owned 313 Aldrich Street, which was 3 houses on the left as you come up the street. His question lies with the parking as there is none allowed for 100 feet up Aldrich and there is none in front of the building. They had been to the Traffic and Safety Committee because of their concerns in the past. He asked if the overflow would go up Aldrich or the next street into residential areas. Also, if deliveries were not coordinated, where would the trucks park. The area was congested and to have 10 spaces backing out would cause a problem. Labor Ready already took 3 to 6 spots. Was there an alternate method for parking or could area spots be rented? He has compassion for the owner, but does not want parking in front of his house.

Mr. Christopher Fennell stated he was the proposed tenant. He noted this would be a satellite store and deliveries would come from Rochester. For floor samples, deliveries would be through the front door before the store opens. There is a back alleyway to the store on his 70% of building. His employees will park in tandem there to free up the front spaces. His operation would be open from 9:30 a.m. to 5:30 p.m.. Looking at Labor Ready, they are mostly gone by 9:00 a.m. or 9:30 a.m., with only some in the later afternoon. He noted that, in the Rochester store, they average 3 or 4 customers at one time as a maximum. It would be rare to have 7 customers in the store at any one time. He noted he had tried to back out from almost every space and there is adequate space to do so.

In response to questions from Chairman LeBlanc and Ms. Eaton, he indicated the backout was also possible for spaces closer to Aldrich and the deliveries from Rochester would be by a 15' box truck. Labor Ready clients park in front and there is no other doorway.

### **SPEAKING TO, FOR, OR AGAINST THE PETITION**

Attorney McGee stated that he didn't think commercial traffic would come up Aldrich, but Islington. There would be some divergence in parking between Labor Ready and the furniture store due to their typical hours of activity

### **DECISION OF THE BOARD**

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

Mr. Witham stated the lot was maxed out and, shy of tearing down the building, this is what they have. This is a low traffic volume use, compatible with the area. He has never seen more than 3 cars there and has backed onto Islington from the parking spaces with ample space to do so without actually getting into the traffic on Islington.

Mr. MacCallum stated he was sympathetic with the abutter who spoke, but they have no choice but to grant. The property has been in place since the early 60's and was boxed in by a fence on one side and Aldrich Road with residences on the other. There was no way to increase the parking spaces. Citing Vigeant v. Hudson, he stated where restrictions deprive the property owner of any use at all, they have to grant a variance. Ms. Tillman has stated that no business could go in with less parking and it was not reasonable to require the owners to tear down part of the building to generate sufficient parking.

The motion to grant the petition as presented and advertised was passed by unanimous vote of 7 to 0.

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IV. ADJOURNMENT.

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

Respectfully submitted,

Mary E. Koepenick, Secretary