

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

**EILEEN DONDERO FOLEY COUNCIL CHAMBERS**

**7:00 p.m.**

**April 17, 2007**

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

**EXCUSED:** None

**ALSO PRESENT:** Lucy Tillman, Chief Planner

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**I. OLD BUSINESS**

A) Approval of Minutes

- February 20, 2007
- March 6, 2007
- March 20, 2007

After minor clerical corrections were noted, a motion was made, seconded and passed by unanimous voice vote to accept the Minutes as corrected.

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**II. PUBLIC HEARINGS**

1) Petition of **Robin A. Rousseau, owner**, for property located at **871 Middle Road** wherein Variances from Article II, Section 10-206(12) and Article XII, Section 10-1201(A)(3)(a) were requested to allow 300 square feet in a single family dwelling to be used by the owner for a Certified Public Account office and to allow the required maneuvering aisle to be less than 24' in width with the existing screening to remain. Said property is shown on Assessor Plan 232 as Lot 119 and lies within the Single Residence B district.

**SPEAKING IN FAVOR OF THE PETITION**

Ms. Robin Rousseau stated that currently she using, 176 s.f., for an approved Home Occupation I providing professional services. She would like a Special Exception to expand to a maximum of 300 s.f. to allow for meeting space. There will be no non-resident employees or need for outdoor storage. She anticipated the public hours to be 9:00 a.m. to 5:00 p.m. with an occasional late

appointment. She stated that the driveway can accommodate 3 vehicles; and the barn/garage area can take 2. There was a long asphalt driveway with turnaround space. The parking space dimensions were met except for the width of the driveway, which was 10’.

Ms. Rousseau identified the views in several photographs that she had submitted. There is a barn in the back which blocks the view of the driveway from the neighbor. She noted that the church next door has services only on Saturday so her business will not interfere.

Chairman LeBlanc clarified that a Home Occupation II only allows hours of operation from 8:00 a.m. to 5:00 p.m., Monday through Friday and does not allow for nighttime meetings and also it was a Variance was needed, not a Special Exception because all the other necessary criteria were not met.

In response to questions from the Board, Ms. Rousseau estimated she could handle one person per hour and that would be the limit on a daily and weekly basis.

Mr. Witham asked about signage and Ms. Tillman stated that would be handled by the Inspection Department.

**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 stated that, in terms of the process, this application lacked what City regulations require, which included dimensions of parking spaces, scale and identification of the owner on the plans. These had not been provided and the Board had just gone through the importance of complying with these regulations.

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

Mr. Witham stated that, while he understood Mr. Parrott’s concerns, the one issue seemed to be the driveway and the plan they submitted does show a width of 10’. His concern about a place to turn around had been addressed.

Mr. Witham stated that the public interest would not be affected. The strongest impact would be to the right where there was a church which was only used on Saturday, and the rear was well screened. In terms of special conditions, this house was built as a home and most homes do not have 24’ wide driveways. The property line and siting of the home were also special conditions and there was no other reasonable method available to the applicant. The Zoning Ordinance was trying to limit two cars passing each other and he felt comfortable this would not be occurring and a 10’ driveway width would suffice. Noting that the Zoning Ordinance does allow for Home

Occupations, granting the petition would be justice for the homeowner and he did not see any diminution in property values.

Mr. Jousse stated that his concern was customers backing out onto the street, but there was ample room in the rear to turn around. It seemed excessive to require a 24’ wide driveway for a private residence.

Mr. Sanders stated that his concern was that there was a heavily laden telephone pole at the end of the driveway which limits the ease of a right-hand turn onto the property and there was no screening on that side of the driveway.

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

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2) Appeal from an Administrative Decision by **Charles Allard, abutter**, concerning property located at **41 Salter Street owned by Elizabeth A. Pruyn** regarding the issuance of Building Permit # 12454 wherein the abutter contends that further Variances and Historic District Commission approvals are required and that Permits have expired. Said property is shown on Assessor Plan 102 as Lot 30 and lies within the Waterfront Business and Historic A districts.

**SPEAKING IN FAVOR OF THE PETITION**

Mr. Charles Allard stated that he lived at 35 Salter Street and was an abutter to the property. His position was that the house should not be moved. He stated that a permit had been issued allowing the owner to move the house back 15’ from the street and now the owner was no longer adhering to what the Board specifically allowed them to act on. He maintained that it does not say anywhere that the applicant can choose up to the 15’ and he was asking the Board to not allow them to modify the building permit after the fact. He stated they had also changed the elevation and wanted to know where they will park, if not on the street.

Mr. Allard stated that he also believed that the building permit had expired. There had been a one year extension and then, it was contended by the owner that a rear wall had been poured so that work on the permit had been started. He maintained there was never any footing poured, but what had been done was to dig a hole just to get an extension of the building permit.

Chairman LeBlanc asked when the house was raised off the old foundation.

Mr. Allard stated he believed it was last year in October or it may have been last summer. He cited a Superior Court ruling, stating that the Court only ruled on the Board’s authority to sit and act as the HDC, but not on whether the City was entitled to grant a building permit. He stated that the owners had not bothered to apply through the DES for a permit. He was asking the Board to consider them to have acted improperly on the building permit.

There was additional discussion among Mr. LeMay, Mr. Allard and Chairman LeBlanc during which Mr. Allard reiterated his concerns. The sequence of past events was reviewed, including the setbacks, the move of the house, the new survey and the Board's concurrence in May of 2006 that the previously approved variances should still be granted considering more accurate survey information.

Mr. Parrott posed a number of questions regarding the position of the house in question relative to the abutter's house and others on the street, stating that there was no consistency in the placement and he was trying to get to the nub of Mr. Allard's concern.

Mr. Allard stated that the owners were not adhering to the front setback stipulated by the Board and not following due process.

Mr. Witham stated that the Board had granted relief up to 15', which was not made as a stipulation, and the owners were taking less relief than they were granted.

Chairman LeBlanc confirmed that it was their option to take less relief.

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

Attorney Robert Ciandella stated that he had detailed in their letter and packet the history of the owner's position in support of the Administrative Decision. There were two basic reasons for the City to reactivate the building permit. First, it had never lapsed, which was supported by the notes of the Building Inspector regarding the pouring of the footing. The second point is the placement of the house 10.25' from the front property line. This was within the 15' relief granted by the Board and the furthest the house can go back and comply with DES regulations.

Attorney Ciandella stated this was the same project presented through a long history, other than the 4.75' difference in the front setback. The elevation is the same. There had been a DES issue and then a side setback issue approved by the Board in 2006. Ms. Pruyn would like to finish the process and get back into the house, which she has not been in since last summer.

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

With no one rising, the public hearing was closed.

#### **DECISION OF THE BOARD**

Ms. Eaton made a motion to uphold the City's position, which was seconded by Mr. Jousse.

Ms. Eaton stated that the applicant did what she should do which was to get a permit, but she can't move it back as far as needed because of the 50' setback from the wetlands. She felt the process was all done correctly and abutters have to work together and be a little tolerant of each other. She noted that the Board had granted a variance for 15' and anything beneath that amount of relief is fine. She didn't see any error in the Board's actions.

Mr. Jousse agreed that when the Board grants a variance, the applicant can choose to take less relief. In terms of any time delay on the permit, he noted that, every time litigation is involved, the clock stops and there had been a lot of interruptions since 2001 on this particular case. The City’s position should be upheld.

Mr. Sanders stated that the 10.25’ distance from the edge of the street was the most legally optimum location for the house.

Mr. LeMay stated that, with the 10.25’ setback, it’s going to be virtually impossible to park a car without sticking into the road. He didn’t know if parking had been an issue in the Board’s decision.

Chairman LeBlanc stated that, on April 17, 2001, when the board granted a variance to move the house back 15’, parking was discussed, but it was not part of the variance they were granting at that time.

Mr. Jousse stated that the presentation had been to have head-in parking. Parking was one of the considerations, but not part of the variance. The way he now saw it, the area was wide enough for two cars to parallel park without head-in parking.

Mr. Witham stated there were limited options here. They can’t follow both the 50’ rule and a 15’ setback.

The motion to uphold the City’s decision to issue Building Permit #12454 was passed by unanimous vote of 7 to 0.

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3) Petition of **Pier II, LLC, owner**, for property located at **10 State Street** wherein an Appeal from an Administrative Decision that the City administration was in error when requiring a variance for the proposed 2 car garage having vehicles backing out onto the street for Unit D.

Notwithstanding the above, if the Administrative Appeal is denied, a Variance from Article XII, Section 10-1201(A)(3)(a)(4) was requested to allow two vehicles exiting a two-car garage by backing into a street where backing out onto the street is not allowed from a lot having more than two dwelling units. Said property is shown on Assessor Plan 105 as Lot 4 and lies within the Central Business A and Historic A districts.

**SPEAKING IN FAVOR OF THE APPEAL FROM AN ADMINISTRATIVE DECISION**

Attorney Malcolm McNeill stated that the project had gone through a series of approvals granted primarily through the Historic District Commission and the Department of Environmental Services. At the end of this process, after all municipal permits were in place, it came to their attention that it was the position of the City that the garage from which they proposed to back onto State Street extension was in violation of the provision for which we seek this Administrative

Appeal. He added that this particular piece of ground was very unique, comprising 7,818 s.f. in the Central Business A zone where no on-site parking was required although it was provided.

Attorney McNeill stated that this was a four unit condominium. For three of the units, the maneuvering for the owner's vehicles would be on private property with no backing into the street. The sole unit they are concerned with is unit #1. Not only is this unit separate in ownership but, because of the requirements of the DES permit, it is physically separated by 2" from the other units. They were considering this to be a single family dwelling.

Chairman LeBlanc asked if this would not, then, be part of the condominium group.

Attorney McNeill stated that the garage for this unit would be owned and used by the people who own this condominium. He noted that this street is a dead end and would only be used to back vehicles out of this unit. He read the definition of "dwelling unit" from the ordinance and stated that the law provides that vehicles for one or two dwelling units can back out. Attorney McNeill referenced page XII-2 of the Zoning Ordinance, covering parking. He read excerpts from paragraphs one and three, noting that they start with the provision, "with the exception of one and two family dwellings," which also applies to paragraph four which relates to their unit. The ordinance requires stricter conformity for larger uses and impacts.

Chairman LeBlanc asked if this was not part of the condominium system as part of a four-unit conglomeration.

Attorney McNeill stated that, as to the use that the ordinance was trying to describe and control, which was the backing out of motor vehicles, he felt it should be limited to where there is more than one dwelling unit making the maneuver.

Ms. Eaton stated that this was a condominium unit and wouldn't be viewed as a single family.

Attorney McNeill responded that a condominium was a form of ownership.

Mr. Parrott stated that, as he understood it, there was only one condominium association, one entity, and asked if there was only one lot.

Attorney McNeill stated that there was one lot, presently owned by Pier Two LLC..

Mr. Parrott referred to item four from page XII-2 of the ordinance where it read that a circulation system should be provided, "within the lot so that vehicles may exit onto the adjacent street." He understood this to clearly indicate that the drafters intended to control backing out on a lot-by-lot basis, not an individual building basis. The petitioners want to say, in one section, that it's really two buildings, but it's one association and one lot.

Attorney McNeill stated he was only dwelling on the 2" between the buildings to indicate the separateness of these uses and the separateness under condominium law of the garages which form the basis for his case.

Mr. Parrott stated that his job was to look at how the City ordinance was written and apply it and it said a lot, singular, and there was one lot here. Technically, there's a paper thin distance between two of the buildings but it seems a slender reed to say, therefore, we have two entities and one is a single family residence.

Attorney McNeill referenced the Planning Department's memorandum to the Board where it noted that "a Variance is requested to back out of the garages onto State Street (which, in his view, meant State Street Extension)..." He noted again that the area in question is a short, dead-end section of State Street and referred to the submitted photographs with various views indicating the limited use of the area. He stated they were asking the Board to find that the Planning Department was in error in determining that a Variance was necessary for this site and overrule that decision.

### **SPEAKING IN OPPOSITION TO THE APPEAL, OR SPEAKING TO, FOR, OR AGAINST THE APPEAL**

With no one rising, the public hearing was closed

### **DECISION OF THE BOARD**

Mr. Witham made a motion to grant the Appeal and overturn the decision of the City, which was seconded by Mr. LeMay.

Mr. Witham stated that, when he looked at this, the crux of the issue was the City saying this is a 4-unit development and the petitioner saying the unit in question was a single dwelling unit. The pertinent sections of the ordinance are prefaced with the phrase that they are with the exception of one or two dwelling units. He believed the intent of the Zoning Ordinance was to prevent having all cars backing out into the street and the purpose was for safety. He noted that there was a parking area for two cars used for the sole purpose of one dwelling unit, which he viewed as a single dwelling unit. He felt the criteria of the Ordinance had been met.

Mr. LeMay stated that he believed the spirit of the Ordinance had been met. It was a practical matter to consider this as a single family residence, to which only one resident of the condominium association had access.

Mr. Parrott stated that he felt that the Department was right in reading the Ordinance for what it says and not what it might say. Vehicle movement is controlled on a lot-by-lot basis and this was one lot, regardless of the number of buildings on it, so the Department was applying the Ordinance fairly and uniformly in saying the petitioners should come in for a Variance.

Ms. Eaton stated that she felt it would be a dangerous precedent to let this go without requiring a Variance as this defines what a Variance is all about. While there may be special conditions, to say this was a single family dwelling unit goes against her understanding of a single dwelling unit, which usually is related to intensity. State Street Extension is a public road and she didn't think anybody would allow a car to back out that close to a public road unless there were special circumstances, which to her meant they would need a Variance

Chairman LeBlanc stated there was another issue involved in that it was zoning officials that issue these permits and ask for these variances. They are not there to interpret the law but simply work by what is there. When there's a question of interpretation, it's the Board of Adjustment's duty and responsibility to decide. To overturn this decision is, as Ms. Eaton said, a very bad precedent.

Mr. Jousse stated that only one unit was before them, but what if it were a 15-unit condominium along the street and, according to what is being asked, each one would be a single unit and allowed to back onto the street. He was concerned about opening the door to this and didn't believe it was the intent of the Zoning Ordinance.

Mr. Sanders stated that, as a safety issue, there is a lot of traffic in the area, which could miss a street and go down the extension. Backing out would be of concern.

The motion to grant the Appeal from an Administrative Decision failed to pass by a vote of 2 to 5, with Ms. Eaton and Messrs. Sanders, Parrott, Jousse and LeBlanc voting against the motion.

Chairman LeBlanc read the Variance request portion of the petition.

#### **SPEAKING IN FAVOR OF THE PETITION FOR A VARIANCE**

Attorney McNeill stated that the issue was whether backing onto State Street Extension, which was 37' long and 19.6' wide would be permitted. The Departmental memorandum states that "The area in question is a short dead end section of State Street running to the water. The only access off this section of street would be for the two garages in question." He didn't feel the Zoning Ordinance contemplated such a restricted use of this dead end appendage of a street. The area has limited use and is often not plowed.

Attorney McNeill stated that the public interest was to prevent traffic conflicts on public streets and this has, historically, been an unused appendage. The only maneuvering will be done by the owners of unit #1. Denying this Variance would create an unnecessary hardship as the Historic District Commission had already permitted a garage in terms of design components. The Zoning Ordinance is concerned about repeated or dangerous backing out of a garage but it could not have contemplated such a unique circumstance. There would be no injury to the public or private rights of others as there would be no interference with the flow of traffic on State Street and there would be bollards at the end of the area to prevent anyone going into the water. Approval of a Variance would provide justice to the owner as the building was already approved in its present form and it was reasonable to have garage units which presented no safety hazard. On the other side is the Prescott Park parking area so values of surrounding properties would not be diminished.

In response to questions from the Board, Attorney McNeill and the architect, Mr. Paul Gosselin, stated that even interior cars can get out in 2 or 3 maneuvers. If headlights were on, they would face the traffic straight on as with any other garage, but they didn't believe that would have any impact. The issue was the forward motion. When Mr. Gosselin stated that State Street was one way, Messrs. Jousse and LeBlanc stated it was a two way street, which Mr. Gosselin then acknowledged.



There was some additional discussion between Mr. Parrott and Attorney McNeill about the name of what Attorney McNeill referred to as State Street Extension and its status as a public street.

Mr. Parrot asked how far a vehicle could back out before it hit something and Attorney McNeill responded that the minimum width was 19'6". Mr. Gosselin noted that the garage doors are 10' wide and drivers could start to turn as they were backing out.

Mr. Parrott raised the issue of how this would work with a pile of snow. Attorney McNeill stated the issue was whether they could back out. The architect was suggesting the maneuverability was there. If the City did not take care of the snow, then it would be in the best interest of the project to do so.

In response to a question from Chairman LeBlanc, he stated that the stub of State Street was paved, but there would be some improvements. It was a public street and pedestrians could walk there.

Ms. Eaton asked about the waterfront access and Attorney McNeill stated they covered the easement issue when going through the Historical District Commission and DES permitting process.

#### **SPEAKING IN OPPOSITION TO THE PETITION FOR A VARIANCE**

No one rose to speak.

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

Mr. David Ewing stated that pedestrian traffic should also be considered and the safest way to get across State Street.

Attorney McNeill stated that, as part of the approved plan, they would be improving the sidewalk in front of the area, with perhaps a crosswalk added.

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

#### **DECISION OF THE BOARD**

Mr. Witham made a motion to grant the petition for a Variance as presented and advertised, which was seconded by Mr. LeMay.

Mr. Witham stated that, strictly looking at this as a safety issue, he was comfortable that it was doable. If it were a major traffic area, it would be different. He noted the exiting traffic would not cross over a sidewalk.

He stated that, although this was a public way, it seemed to get very little use and no public parking allowed. He noted that zoning does allow for backing into traffic from certain dwelling units. The particular restriction has to do with safety and he didn't see this as a safety issue. He

also didn't feel that the public or private rights of others would be interfered with. There would be more injury to the owner by not allowing the property to be developed as approved by other agencies than there would be to the public in denying the Variance. There was only a park as an abutter so there would be no issue of diminution in the value of surrounding properties.

Mr. LeMay stated that the Variance would not be contrary to the public interest as there was no safety problem. The property abutted a dead end street. He felt it was in the spirit of the ordinance to consider this access as a single family use. His only concern was parking.

Chairman LeBlanc stated that the City Council determines no parking areas and Mr. Witham stated there is already a sign on a pole designating the area as no parking.

Mr. Parrott stated it was always in the public interest to get parked cars off the street. If parking became a problem, the Traffic and Safety Committee and the City Council could address the issue.

The motion to grant the Variance as presented and advertised was passed by a vote of 6 to 1, with Mr. Sanders voting against the motion.



4) Petition of **Kendall P. and Sarah N. Faulstich, owners**, for property located at **267 Broad Street** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) are requested to allow a two story 13' x 28' garage with living space above connected to the existing dwelling by a one story 4' x 15' mudroom with: a) a 2'± right side yard where 10' is the minimum required and b) 30.4±% building coverage where 25% is the maximum allowed. Said property is shown on Assessor Plan 131 as Lot 18 and lies within the General Residence A district.

**SPEAKING IN FAVOR OF THE PETITION**

Ms. Anne Whitney passed out a petition of support signed by the owners of Lots 19, 17 and 9 on Map 131 that she had submitted in the packet. She stated she wanted to make a clarification regarding the departmental memorandum, which listed total building coverage after the Variance granted by the Board on April 17, 2001 as being 30.3%. When she measured the property for actual square footage, the total existing including what was approved in 2001, came to 1765 s.f., or 27.3% coverage. The total building coverage requested in her current application is 30.4%.

Ms. Whitney stated that they were proposing to remove an existing 12'3" x 18'3" garage that had been used as a study with bathroom and replace it with a new garage and connector to the house. In designing, they needed to consider the narrow lot and the tight entry at the rear door. The 4' connector, plus the existing space would combine to create a mudroom. She referred to the departmental concern that the garage with living space remain a single family residence. They designed a three quarter bath on the second floor of the proposed garage, thinking that it would serve as an occasional guest room. They would like to keep it, but if it seems too much to the Board like a small apartment, they could change that to a single, or a half bath.

She stated that the existing garage overlaps the property line. They were proposing to shift that 3'3" and pull it forward to minimize the length of the driveway. She noted the most affected property is lot 19 on the tax map. Currently, between the existing living space on her client's property and the building on lot 19 is 6.5' and they would be increasing that to almost 10'.

Addressing the setback issue, Ms. Whitney stated that the existing lot was narrow and they were improving the situation of the existing garage overlapping the property line so there would be no diminution in the value of the neighboring property. The design compliments the existing structure. She felt substantial justice was done by making the property less non-conforming and providing a more usable garage. By pulling the garage forward, they were almost forced to connect it, which provided the much needed mudroom. The proposed plan is not out of scale with surrounding properties. It's not unusual for that neighborhood to have structures close to, or on, the property lines. Increasing the distance between buildings will not negatively affect light and air. The hardship would be the existing narrow lot and the structure overlapping the property line.

In response to a question from Mr. LeMay, Ms. Whitney stated that she believed the previous use had been approved.

Mr. LeMay noted that the previously granted Variance had included a mudroom.

Ms. Whitney stated that mudroom became a stair because of the way it stepped down to the basement. There was a small closet, but it was a tight situation.

Mr. Kendall Faulstich stated that they were a growing family and the property did not have a lot of storage. He outlined a little of the history of the property, stating this project would solve many problems for them.

### **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 deny the petition, which was seconded by Ms. Eaton for discussion.

Mr. Parrott stated that his concern was that, looking at the property, it already gives the appearance of being overdeveloped. This was a narrow lot and, if the project were approved, the only way you could get from the front yard to the back yard would be 2' on either side other than going through part of the structure. It's already over the limit by about 2.3% and this proposal would bring it up to 30.4%. The structure connected to the house would, both, footprint and height wise, give the impression of just being too much on the property. It had been pointed out that it is common in that neighborhood to have houses close to the property line. This would simply aggravate that situation further.

With particular reference to the Boccia analysis, he felt it was not consistent with the spirit of the ordinance, which is to site houses and outbuildings on the property in a way that keeps an appearance of good use of the land and allow as much open space as is feasible. Substantial justice was not done to the neighbors, as the project would cut down light and air. To his mind, this addition was not in the public interest.

Ms. Eaton stated that the biggest issue was that there was only 2’ on either side. She felt there could be a better configuration that would allow more of a setback.

Mr. Jousse concurred. While the garage placement was an improvement over what is existing now, it was not enough.

Mr. Sanders disagreed, stating he felt this would fit in mainly because of its size and location compared with what presently exists to the right, so he would support the petitioner’s application and not the motion.

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

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5) Petition of **Anne Elizabeth and Alan Gregg Weston, owners**, for property located at **43 Pray Street** wherein Variances from Article III, Section 10-304(A) and Article IV, Section 10-401(A)(2)(c) are requested to allow a previously approved 15’10” x 5’2” open deck to have a roof extending over the entire deck and replacing the existing smaller roof with a 4’7”± right side yard where 30’ is the minimum required and an 9’1”± rear yard where 20’ is the minimum required, and b) to increase the height of the roof on the existing one story rear addition from a 6/12 pitch to a 12/12 pitch thus increasing the height of a nonconforming building. Said property is shown on Assessor Plan 102 as Lot 39 and lies within the Waterfront Business and Historic A districts.

**SPEAKING IN FAVOR OF THE PETITION**

Mr. Roe Cole stated that when they had appeared on October 17, 2006, the original Variance they sought was to add a full second floor to the deck. It was the Board’s feeling that the height of the structure would take away from the neighbor’s sunlight. They have gone back and are now making a minimal request to allow approximately 3’6” in height to raise the back roof and put a 12/12 pitch on it. That is necessary to extend the roof that they were planning to hook into the main front porch. The existing roof over the deck is a green corrugated plastic, which they would like to replace and extend it a few feet left and right.

In response to questions from Mr. Parrott and Chairman LeBlanc, Mr. Cole confirmed that the existing roof was as shown on page A-2 in the exhibits and the window it seemed to skim by had been slid forward to the front to allow for the new roof pitch. There was about a 6” increase in height between the current pitch of the roof on page A-2 and the proposed roof on page A-6.

Mr. Jousse asked why the roof pitch was changed.

Mr. Cole explained that, if they go to the front cover sheet, they could see how the front porch with the extension was a 3/12 pitch. They need to raise it up and, if he didn't change the rear roof, it would be above or close to the front top edge of the ridge of the existing structure and it wouldn't look as aesthetically pleasing as the way it's drawn. As the house was fixed up and without impacting the neighbors, this would be a chance to make the house look more to the period.

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

Mr. Sanders stated that the height difference was very slight and would provide better runoff. He felt the variance was consistent with the spirit of the ordinance and granting it would not diminish the value of surrounding properties.

Mr. Witham stated that the intent of the ordinance in regard to this application had to do with light and air issues. He didn't see this in any way being a violation of those kinds of rights of any of the abutters. There was an existing roof in this area. He saw the need for increasing the pitch of the roof as otherwise it would go up and over and a flat roof didn't make sense. In relationship to the spirit of the ordinance, he felt this was more in keeping with what the Historic District Commission would want.

Chairman LeBlanc stated that the right side yard and rear yard setbacks were smaller than they should be and he had not heard any serious condition as to hardship, so could not support the motion.

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

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6) Petition of **Charles L. Lassen Revocable Trust, owner, Charles L. and Susan E. Trustees**, for property located on **Round Island with a mailing address of 75 Salter Street** wherein a Variance from Article III, Section 10-301(A)(9) is requested to allow the property to be used for a single family dwelling without access and frontage on a City street after such use has been discontinued for more than 8 months. Said property is shown on Assessor Plan 207 as Lot 1 and lies within the Single Residence A and Historic A districts.

**SPEAKING IN FAVOR OF THE PETITION**

Ms. Anne Whitney identified the exhibits they had provided, including Tax Map #207 which showed Round Island and the public access point, tax cards for the property which showed it had been taxed as a single family residence, a site plan showing where the sewer and water lines were brought over to the island, a footprint of the building, and several photographs. They have been working with DES to get the water and sewer lines completed and do some minimal work on the existing basement so they can get sanitary services and water on the island for subsequent renovations.

The property was purchased in January of this year after not being occupied for several years. She identified on the photographs projects on the property that had never been completed. The last owner had started the DES process which was completed to within 15' of the building, at which point a plumber should have taken over. The building permit was pulled and never acted upon. In 2004, the application with DES expired so they were in the process of applying for that final connection.

Chairman LeBlanc asked if the water and sewer were actually on the island.

Ms. Whitney responded that the lines were on the island and the equipment was in the building, but they were never connected.

Ms. Whitney stated that the hardship for access has always existed with this island. The structure was built as a dwelling and had intermittent use over the years. Peirce Island provides access and there are docks providing access by skiff or small motor boat. The property is in full view of the south end and Peirce Island. There are regular marine patrols. In order to get insurance, the owner will be required to install sprinklers so they will have better fire protection. In response to a question from Chairman LeBlanc, she confirmed it will be a dry system.

Ms. Whitney stated that the main issue for a Variance seemed to be that it had been unoccupied and also that there has always been an access hardship. She felt that had been overcome over the years. It has always been thought of, and taxed, as a single family dwelling. The building permits in the last ten years have been issued without having to be reclarified except for having long stretches when there has been no use on the island. The Planning Department felt that they needed to re-establish this use so they could move forward with the renovations.

In response to questions from Chairman LeBlanc and Mr. Grasso, Ms. Whitney confirmed that the property lines were at mean high tide. Regarding an emergency, there were the fire boat and the marine patrol. There were also a police patrol or the Coast Guard.

Mr. Charles Lassen stated that while it was true that there was no frontage, in terms of services, he was happy with the level of security and protection that would be available. He outlined how he would handle any emergency and the access issues. They want to do this right and have the means and vision to make a nice addition to the Portsmouth skyline. In response to a question from Chairman LeBlanc, he stated he believed the police boat was moored at the City docks near the salt pile and it can get under the bridge.

**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**

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

Ms. Eaton stated that the property was unique and the special conditions were obvious. Renovating it and having utilities out there would be a great improvement. If the Board denied the petition, they would be basically denying any use of that building. The Variance would be in the spirit of the ordinance as the structure was built for this purpose. Substantial justice would be done by allowing the owner to use and improve the property. Surrounding property values could only be improved because now the property looks as if it were abandoned.

Mr. Parrott agreed. The property certainly qualifies as unique. He felt all the obvious concerns had been addressed. With respect to providing city services and having access to the property at different stages of the tide, this had been looked into and they have a way to deal with it. He didn't feel it would be a burden on the taxpayers.

Mr. Witham asked if the maker and second of the motion would want to include the stipulation proposed by the Planning Dept. While it might be self evident, it probably should be stated.

Ms. Eaton and Mr. Parrott agreed that it should be included.

The motion to grant the petition as presented and advertised, with the following stipulation, was passed by a unanimous vote of 7 to 0:

- That the owner obtain all the necessary permits to connect all utilities including sewer and water as well as, but not limited to, any easements and testing required by the Public Works Department and NH DES Wetlands Bureau.

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**III. ADJOURNMENT.**

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

Respectfully submitted,

Mary E. Koepenick, Secretary