

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

EILEEN DONDERO FOLEY COUNCIL CHAMBERS

7:00 p.m.

AUGUST 19, 2008

MEMBERS PRESENT: Chairman Charles LeBlanc, , Carol Eaton, Thomas Grasso, Alain Jousse, Charles LeMay, Arthur Parrott, Alternates: Derek Durbin, Robin Rousseau

EXCUSED: Vice Chairman David Witham

ALSO PRESENT: Lucy Tillman, Chief Planner

I. OLD BUSINESS

A) Approval of Minutes – July 15, 2008

It was moved and seconded to accept the Minutes as corrected.

Messrs. Durbin and Parrott recused themselves from the vote as they had not been in attendance at the hearing.

The Minutes as corrected were passed by unanimous voice vote of the remaining members.

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B) Petition of **New England Glory LLC, owner**, for property located at **525 Maplewood Avenue** wherein an Appeal from an Administrative Decision regarding the determination of the Code Officials that the Building Permit to convert the 9 apartments into a 14 room Bed and Breakfast has lapsed as the building continues to be used as 9 apartments.

Notwithstanding the above, if the Administrative Appeal is denied, a Variance from Article II, Section 10-206 was requested to allow the existing 9 apartments to be converted into a 14 room Bed and Breakfast. Said property is shown on Assessor Plan 209 as Lot 85 and lies within the General Residence A district. *This petition was postponed from the July 15, 2008 meeting.*

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

Chairman LeBlanc announced that a request had been received from the applicant to postpone this petition indefinitely.

Mr. Parrott made a motion to postpone the petition indefinitely, which was seconded by Mr. LeMay. The motion was passed by unanimous voice vote.

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C) Petition for Rehearing for property located at **930 Route One By-Pass.**

Messrs Durbin and Jousse recused themselves from consideration of this petition. Ms. Rousseau assumed a voting seat.

Mr. LeMay made a motion to deny the rehearing, which was seconded by Mr. Grasso.

Mr. LeMay stated that, in reading through the application, he didn't see any information that was not known at the time of the hearing. There was no new information and no persuasive argument that any errors had been made in arriving at the decision.

Mr. Grasso stated he agreed and had nothing further to add.

Mr. Parrott stated for the record that, although he had not been at the meeting, he had read the file and felt he was up to speed on it and able to vote.

The motion to deny the rehearing was passed by a unanimous vote of 6 to 0.

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D) Request for Amendment of Variance granted July 15, 2008 for property located at **150 Route One By-Pass.**

Messrs. Durbin and Parrott recused themselves as they had been absent from the initial hearing of the request.

Mr. Jousse stated that the applicant had raised valid points. He visited the property and there was a tremendous amount of vegetation between the property and abutters, although most of vegetation was on the abutter's property. There was also a solid 6' fence along the whole property line. He didn't feel it made good sense to remove trees to plant other trees. He didn't know what it would look like in 4 or 5 months, but there were two or three mature evergreens. He would welcome a recommendation from somebody on the city staff before making a decision.

Ms. Tillman stated that this would have to go through the site review process and, without making it a stipulation, the Board could ask the Site Review Committee to assess the site and determine whether the screening was adequate.

Chairman LeBlanc stated that the request was to return to the January 15, 2002 stipulation that the arborvitae be placed along the fence between the property line and the new addition. Ms. Tillman noted that the Board's stipulation in July had extended that arborvitae all along the property line. Chairman LeBlanc confirmed that the petitioners want to bring it back to the original stipulation.

Mr. Jousse made a motion to amend the Variance granted July 15, 2008 with the stipulation that the arborvitae screening be extended along the entire length of the property line. Mr. Grasso seconded the motion for discussion.

Mr. Jousse incorporated his previous comments. He would request that the Site Review Committee be given this task of reviewing the adequacy of the screening and act on it appropriately.

Chairman LeBlanc clarified that the motion would return the variance to the January 15, 2002 stipulation regarding arborvitae screening and that the issue would be referred to the Site Review Committee.

Mr. Grasso stated that there had been a speaker from Hillside Drive at the July meeting and that was why he had made a motion to extend the screening. At this time, he would support Mr. Jousse’s motion and allow Site Review to look over the adequacy of the screening.

The motion to amend the Variance granted July 15, 2008, by removing the stipulation that the arborvitae screening along Hillside Drive be extended along the entire length of the property line and returning to the stipulation regarding the screening which was attached to the Variance granted January 15, 2002, was passed by a unanimous vote of 6 to 0.

Messrs Durbin and Parrott resumed their seats.

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II. PUBLIC HEARINGS

1) Petition of **Webster H. Kohlhase Jr. and Debra Kohlhase, owners**, for property located at **187 Union Street** wherein a Variance from Article IV, Section 10-402(B) was requested to allow a 10’ x 16’ shed with a 6’ x 10’ attached porch with a 3’± right side setback and an 8’± rear setback back where 10’ is the minimum required in each instance. Said property is shown on Assessor Plan 135 as Lot 68 and lies within the Apartment district.

Chairman LeBlanc stepped down for this petition and Mr. Parrott assumed the Chair.

SPEAKING IN FAVOR OF THE PETITION

Mr. Webster Kohlhase stated that the variance was needed because the lot was narrow and a 10’ setback would put the shed in the middle of the grass area. With 3’ on the side and 8’ at the back, there was still room for a lawnmower to pass. He noted that the direct abutters had no objections. Referencing the submitted photographs, he stated that, the way the lot was laid out, moving the shed further back from the lot line would not make sense.

**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 for discussion to deny the petition, which was seconded by Mr. Durbin.

Ms. Eaton stated that a 22’ long structure 3’ from property line was a little excessive and wouldn’t meet the criteria for that reason. She felt there could be a compromise or a different proposal which wouldn’t present a shed and attached porch of that length.

Mr. Durbin agreed that this was a lot of structure close to the property line. He didn’t feel the Board should redesign the project at the hearing, but should deny the request on the merits. The applicants could redesign and move the structures to accommodate their needs while not encroaching to this degree.

Mr. Grasso stated that the criteria on which this request failed was that there was another reasonable method which the applicants could pursue, which was to make the proposed shed and porch smaller.

Mr. LeMay stated that, while there were some mitigating circumstances, the sheer size in that corner of the property was more than he could support.

The motion to deny the petition was passed by a vote of 6-1 with Ms. Rousseau voting against the motion.

Chairman LeBlanc resumed the Chair. Ms. Rousseau resumed a non-voting seat.

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2) The Portsmouth Board of Adjustment, acting pursuant to NH RSA 12-G:13 and Chapter 300 of the Pease Development Authority Zoning Requirements, will review and make a recommendation to the **Board of Directors of the Pease Development Authority** regarding the petition of **Two International Group LLC, applicant**, for property located at **100 International Drive** wherein a Variance from the Pease Development Authority Zoning Ordinance Article II, Section 303.04B was requested to allow a 3,025 sf Law office in a district where professional offices are not allowed. Said property is shown on Assessor Plan 306 as Lot 2 and lies within the Industrial district.

**SPEAKING IN FAVOR OF THE PETITION**

Attorney Bernard W. Pelech stated that the Board had granted a variance in February for two professional engineering offices and another professional office for a dermatology practice in the same building. They were now seeking to use 3,025 s.f. for professional offices in a district where they were not currently allowed. He noted that the following month, a hearing would be held at the Pease Development Authority to allow professional offices in the district.

Attorney Pelech stated that having these offices in close proximity to many other professional offices and in the same building as building offices would not conflict with the public interest. The spirit of the ordinance would not be violated by granting a variance for professional offices as the Pease Development Authority Ordinance does allow business offices in this district. There

would be no benefit to the public that would outweigh the hardship on the applicant if the petition were denied as this was not a high intensity use. He stated that the building was well maintained and would not diminish the value of surrounding properties. The hardship was that a law office was a reasonable use, but was located in a district which was surrounded by professional offices, but only allowed business offices. For the same reasons, there was no fair and substantial relationship between the restriction and the ordinance. Attorney Pelech noted that the Board had previously granted similar variances.

Attorney Peter Loughlin confirmed that, on the 18<sup>th</sup> of September, there would be a public hearing on a number of proposed changes to the Pease Development Authority Ordinance and one would be to add professional offices as offices approved for this district.

**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 recommend the granting of the petition, as presented and advertised, to the Board of Directors of the Pease Development Authority. Mr. Grasso seconded the motion.

Ms. Eaton stated that Pease already has a significant number of professional offices and the process was in place to correct the zoning. Noting that the Board had made similar recommendations to grant in the past, she stated that this was an appropriate use for this property. It would not be contrary to the public interest to add a use which was already in place. The special condition was a glitch in the zoning which would soon be addressed. She could see no difference between a professional office and a business office which would be against the spirit of the ordinance. Justice would be served by allowing the owner to continue to use the property as it currently is being used.

Mr. Grasso added that this was an ideal spot for a professional office.

The motion to recommend the granting of the petition, as presented and advertised, to the Board of Directors of the Pease Development Authority was passed by a unanimous vote of 7 to 0.

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- 3) Petition of **Nobles Island Condominium Association, owner**, for property located at **500 Market Street** wherein a Variance from Article IX, Section 10-908 was requested to allow: a) 4 freestanding signs totaling 103 sf where 10 sf is the maximum square footage allowed, b) 3 attached signs totaling 99 sf where 60 sf is the maximum square footage allowed; and, c) 202 sf of aggregate signage where 75 sf is the maximum allowed. Said property is shown on Assessor Plan 120 as Lot 2 and lies within the Central Business A and Historic A districts.

**SPEAKING IN FAVOR OF THE PETITION**

Mr. David Choate stated that he represented the Executive Committee of the Nobles Island Condominium Association and with him were Mr. Doug Bates, President of the Portsmouth Chamber of Commerce and Mr. Boyd Morrison, the graphic designer. He acknowledged that this sounded like a fairly substantial increase and wanted to provide an overview of their needs. Their first purpose was to obtain a directory sign to better direct visitors as a lot ended up at the Chamber of Commerce asking for directions. There were 25 residential and 25 business units and problems were created when visitors did not know where they were going. Secondly, they wanted to upgrade the quality of the graphics. He noted that as you come down Market Street, there was lettering for Nobles Island which blends in so that people pass by. As a sidebar, they wanted to improve and unify Chamber signage and make it clear that was an information center for the city. If approved, that would all tie in. Mr. Choate noted that the property was the largest property in the Central Business B district in terms of buildings and he doubted that the ordinance had taken such a property into account when setting 75 s.f. as the aggregate signage.

Mr. Boyd Morrison, of Gamble Design, described the history of the project, noting that the goal was not just signage but to create a graphic signature for Nobles Island and blend with the architectural environment. In the packet they had received were existing and proposed signage. Referring to the presented photographs, he detailed the setting, materials, and purpose of each sign in order of arrival for a visitor. This included signage at the street where a visitor would turn in, secondary directional once inside the complex and a center listing of business and residential tenants, with a building i.d. system. This would be an integrated system that would work throughout.

In response to a question from Chairman LeBlanc, he stated that they don't want generic directional signs. They want a uniform system. He cited the problem of identifying the Chamber of Commerce where the current graphics and signage were woefully inadequate. They would upgrade graphics, add a new logo and accent the entrance to catch the eye as drivers come up Market Street. The goal was to organize and make symmetrical and readable the graphic information that people need to know, using the architectural elements of the building.

Referring to the Chamber sign, Mr. Parrott asked what the rule of thumb was for visibility for a 16' wide sign, that is, how far away was it designed to be seen. It seemed large.

Mr. Morrison stated that you could see an inch of letter height, depending on your visual acuity, anywhere from 15 to 30 feet. One of the things working against them was that the sign would be perpendicular to the line of vehicle movement. The letter forms were approximately 10", so that would be readable.

Mr. Parrott noted that, in his description of the signs, he had said they were sizing the sign to the opening on the building, but he seemed to be saying something different now. Mr. Morrison stated that there was a certain opening which assured them that someone would be able to read the sign. They were trying to take what the architecture gave them. Mr. Parrott stated that his question was whether this was the size needed to be seen or the size that fitted. Mr. Morrison said, "both." Chairman LeBlanc asked the size of the current sign and Mr. Morrison stated it was probably between 9' and 10' wide.

Mr. Parrott stated that he had initially said the sign was needed to let people coming down the highway know what was in there. Once in there, was a huge 16' sign on a stand-alone building needed to spell out what visitors had already figured out?

Mr. Morrison stated he would argue that they hadn't already figured it out. The entryway sign had been made relatively small and didn't give a tremendous amount of run-up. Like a highway, more than one cue was needed. It was a basic way-finding principle to repeat information and have the payoff at the end.

Mr. Grasso referenced the lower left photo on the poster showing the proposed location of the sign saying "500 Market Street." He asked if the sign was on city land. It looked close to the road.

Mr. Morrison stated that, according to Mr. Choate, the sign was on Nobles Island land.

Mr. Morrison continued that he felt that all of the signs were architecturally integrated and noted that the directory sign was part of the aggregate and was not visible from the street. He didn't feel that the 27 s.f. for a directory sign was excessive on a nearly 3 acre property with multiple destinations and users.

Mr. Jousse stated that, to him it seemed like a lot of signage, much of which was superfluous. Looking specifically at the Chamber of Commerce sign, it said "Portsmouth" three times. He felt visitors knew it was Portsmouth. Having Greater Portsmouth Chamber of Commerce somewhat made sense and the "Visitor Information" made sense, but to have Portsmouth on the two side lengths did not make sense. When he questioned the need for address number signs on the buildings, Ms. Tillman stated that the address number signs were exempt.

Mr. Jousse stated he had no problem with address number signs, but did have a problem with listing all the other names on there. A visitor was going to one office and didn't need to know before going in what else was inside the building. They could have a directory inside.

Mr. Morrison stated, regarding the "Portsmouth" letterings that, when standing at the awning, you can't read the sign above. He stated that you don't take in all these signs at once, but rather, sequentially as a visitor was always moving. The outside plaques on the building were already there and they were just reorganizing a little better. There were no directories inside the buildings. They were only adding the address numbers, which were not there now and were exempt. Mr. Choate noted the many different types of signs that were included on the submitted list and the different types of signs exempt from the list. Either they already existed or were exempt from inclusion in the signage square footage. He stated that the biggest problem at Nobles Island was people finding individual units. Visitors need to find more than the building, they need find the company without going into the Chamber of Commerce and this would go a long way to solving the problem. The numbering was simply to identify Building 2 or Building 3, for instance.

Ms. Rousseau commented that their design was quite tasteful. She thought the colors really worked and were a nice fit with the historical character of the neighborhood and the condominium complex needs this desperately. She herself had gotten lost in the complex trying to find an address. She stated that it was not the people living in Portsmouth who were looking for the Chamber of Commerce, but it was people getting off the highway who decide they want to go to Portsmouth and, "oh, they pass this wonderful looking sign that they proposed – because the other

one you can barely see - and say ‘hey, let’s go get some information about the attractions and the restaurants in Portsmouth’.” She stated that was what they wanted. They wanted to draw people in and this was quite tasteful and fit very nicely with the design of the building.

Chairman LeBlanc commented that they were still way beyond what was allowed by law.

Mr. Choate responded that was why there were zoning boards. He wanted to emphasize that this signage would replace what was currently on the building. There were currently 3 signs which would be replaced. The awning was exempt and the decals on the side of the building were only 7 s.f. Also, there were two entrances to Nobles and only one was an exit. Visitors may not see the sign on the road, but would see the sign on a building before they went by.

Mr. Morrison added that the 75 s.f. restraint was very difficult when trying to provide the amount of information people need to navigate. They had weaned it down to what was needed for safety, etc. It was really not that much different from what was there now, but was ineffective.

Mr. Doug Bates stated he was President of the Chamber of Commerce and that, every day, they see between 170 and 200 people in their office, and up to 400 for special events. When the cars come screaming down Market Street, there were only seconds for the drivers to see the location and decide to come in. It was important to welcome people to the City.

Mr. LeMay asked Mr. Morrison to comment on the signage which was exposed and visible from Market Street. How did this compare to the zoning signage requirements and how did it work out for square footage.

Mr. Morrison stated that zoning treats the property basically as a single tenant, thus the 75 s.f. allowed. The elements visible from the public way were the Greater Portsmouth Chamber of Commerce sign and two gateway signs. They would see the primary directional sign on the median and that was it. None of the others would be visible from the public way. Mr. Choate added that, if the Chamber signage was counted, it would be 62 s.f. + 84 s.f., or 146 s.f. total.

Mr. Morrison stated that the Chamber signage represented a majority, of which 84 s.f. was the panel sign suspended in the opening. Mr. Choate stated it was actually more than that because he didn’t include the vinyl, but it was a substantial majority. In contrast, they could look at that evening’s agenda and see item 6) for Bed, Bath & Beyond, requesting 1,750 s.f. for one store.

Mr. Jousse asked what the square footage was at present. Mr. Choate stated that the numbers, as best they could calculate excluding the exempt signs, were in the left hand column on the sign matrix, which shows 74.85 s.f. That was the problem because, at that level, they might as well not have any signage.

Mr. Morrison added that the secondary directional sign was double-sided, 4.5’ x 8’ and represented 34 s.f. which was not included in the current calculation or shown on the calculation sheet. He was surprised when told by the code officer that this was going to count toward the aggregate square footage because it was not visible from the public way, but the code officer said it was a sign on the parcel and should be counted. To return to Mr. LeMay’s question, you couldn’t see it unless you were inside the Nobles complex.



Ms. Rousseau asked if it was correct that, because of the unique setting of the property in this environment, staying within the current ‘regs’ historically had not worked. Mr. Morrison stated that was correct. Ms. Rousseau then asked, “And, so you’re proposing this to allow yourself substantial justice and to allow for, in the best public interest, to direct them to the correct places?”

Mr. Morrison stated that was true.

Mr. Choate stated he would address these in his summary once all the questions had been asked by the Board.

There was a brief discussion between Mr. Parrott and Mr. Morrison regarding the color of the proposed new Chamber sign, determined to be deep blue, and color of printing, with Mr. Parrott questioning the contrast and why the word, “Portsmouth” was so large and “Chamber of Commerce” so small. Mr. Morrison maintained the present sign could not be seen and was in the wrong place. When Mr. Parrott noted the proposed sign would be on the same wall, Mr. Morrison stated that the present sign did not relate to the architectural form. You always want to tie identification and the entryway together.

Mr. Bates added that the logo for the Chamber was determined to be the Chamber’s new brand after a vigorous branding process. Responding to a previous comment from Mr. Jousse, he stated that they have had people coming in who did not realize where they were and thought they were in Ogunquit.

In response to questions from Chairman LeBlanc, Mr. Morrison stated that the signs at the bottom right of one of the exhibits used standard symbols. They were trying to keep the same look as the others while retaining the symbols. The no exit sign used the international symbol and sometimes they add, “Do Not Enter.” Mr. Choate added that the parking lot was also to be repaved and restriped and “no exit” would be painted on the pavement.

Addressing the criteria as outlined in his submitted documentation, Mr. Choate stated they were proposing a total of 202 s.f. as indicated on the provided chart where only 75 s.f. was allowed. Currently, they had 74.85 s.f. The hardship was this was the City’s largest Central Business B mixed use complex, 50 units scattered in 7 different buildings on 2.42 acres. He stated the 75 s.f. of aggregate signage was intended to apply to single buildings in the CBB. It was critical to better organize the signage and have more visible entrance signage at both access drives to Nobles Island and a user friendly directory sign at a minimum. The number of buildings and general layout did not lend itself to 75 sf. aggregate signage. The property configuration provided the primary hardship and denial would perpetuate that hardship.

He stated that there would be no diminution in the value of surrounding properties, as the property was surrounded by water and one building which was converted to residential and office condominiums. With the majority of the proposed new signage interior to the property, the aesthetic improvements, new landscaping and improved signage would actually improve property values. Mr. Choate stated that the spirit of the ordinance anticipates first and upper floor signage for commercial uses. As previously stated, when the 75 s.f. aggregate was conceived, there was no thought given to the impact on Nobles Island. Thus, the proposed signage was not contrary to

the intent of the ordinance which was to provide reasonable signage. In the public interest, he stated that the signage would provide direction and identification. Regarding justice, if the variance were not granted, the current hodge-podge signage would be perpetuated and visitors and businesses would suffer.

When Ms. Eaton asked him to comment on the need for the sign in the front, Mr. Choate stated that and the directory were the most important. Currently, they consisted of brushed aluminum signs on a wall and one of the issues was that people don't know where Nobles Island or 500 Market Street were and end up at the Sheraton. There was a clear message from all the business owners and residents of the Association that people, when they get to the traffic light, need to be able to look left and identify Nobles Island.

Mr. Morrison stated that there was currently a cast metal bar, which they call the datum line. The sign she mentioned continues the line and runs straight across in a clean architectural line. It would not be oversized at all. Mr. Choate added that the coloration would also be fairly innocuous. They originally intended to illuminate the sign, but eliminated that so there wouldn't be a glaring light from Market Street. Mr. Morrison demonstrated how the letters would look against the dark surface, indicating that it would follow the theme.

#### **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. LeMay.

Ms. Eaton stated that it would be in the public interest to improve conditions. The Chamber of Commerce needs to be easily found and, with the number of buildings and uses, the 75 s.f. was woefully inadequate. As to special conditions creating a hardship, the Central Business B district was designed for smaller downtown businesses where people were walking as opposed to this complex of many different uses, with people driving by. She stated that the spirit of the ordinance was to maintain signage scaled to the property and uses. Justice would be served by improving access to buildings and preventing unnecessary intrusions on residents and other businesses for directions. She stated that the signage was attractive and cohesive and would improve the look of the whole complex. With the Port Authority on the other side, there would be no diminution in property values.

Mr. LeMay stated that this was a unique location and development and some of the signage that adds to this total was essential, such as the directory at 20 some odd square feet. With the Chamber of Commerce, this was an unusually busy destination as opposed to others in the CBB. He felt there was a safety issue in a first time visitor easily identifying this property.

Mr. Jousse stated he would not support the motion. This was an area with a 35 mph speed limit and the sign placed next to the street covers all that needs to be covered. The signs on top of the

wall saying “500 Market Street” and “Nobles Island” were superfluous. The primary directory map inside was helpful, but the sign over the Chamber of Commerce was way too big. If the request were for one and a half times the allowed square footage, he would be more inclined to go along with it, but this was greater than two times.

Mr. Grasso stated that he agreed with Mr. Jousse. He liked the sign next to Market Street for direction and orientation and felt they could go up to 150 s.f., but some of the interior signage was not needed.

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

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4) Petition of **JMK Realty LLC, owner**, for property located at **700 Peverly Hill Road** wherein a Variance from Article IX, Section 10-908 was requested to allow two 32.5 sf signs for a total of 265 sf attached and aggregate signage where 200 sf is the maximum allowed. Said property is shown on Assessor Plan 252 as Lot 2-10 and lies within the Industrial district.

SPEAKING IN FAVOR OF THE PETITION

Attorney Peter Loughlin stated he was there with Mr. Dave Brubach on behalf of JMK Realty, who ran this operation and several others. They had a straightforward request for a variance. He had laid it all out in the submitted materials to reduce the amount of time that evening. He stated that Portsmouth Auto Body Center was one of four auto body centers in the State aligned with GEICO. They have people coming and looking for this location from throughout southeastern New Hampshire. Attorney Loughlin stated that this was a significant employer of 19 people and their ability to attract business was important to them. That was the purpose of the GEICO relationship and the request for the signs. He stated that the property was unique in that it was on the corner and from Peverly Hill Road, you wouldn’t see a sign on West Road, and ‘vice versa.’ The maps in the submitted material showed that this property was one of the larger lots in the area with more frontage. It had two buildings and could be subdivided, which would double the amount of allowed signage. The lot also had no monument sign. The signage that exists was on the building and set back from the road, but does serve a purpose as would the proposed sign.

Attorney Loughlin stated that, as determined by court rulings, a variance would not be contrary to the public interest unless it violated basic zoning objectives. Given the rather minimal signage, this would not be against those basic objectives. The special conditions resulting in unnecessary hardship were the frontage and the set-back location. The lot area was large with two buildings and the additional signage was not going to overwhelm the area. There was no other reasonably feasible method to pursue. He noted that the departmental memorandum had mentioned the two, 100 s.f. signs currently on the building. He felt that it might not have been reasonable if they had originally come in asking for those two signs, plus the two new ones. But, in determining their original requirements, they had not anticipated that signage would be come an important aspect of attracting other businesses. It would not be reasonable to have to take down one of these long standing signs. The spirit of the ordinance was to regulate the amount and location of signage from both aesthetic and safety points of view. Neither would be affected by this proposal. There would be no benefit to the public outweighing the injury to the landowner if the request were not

granted. Surrounded by city land, the back of a supermarket and a storage facility, there would no negative impact on the value of area properties.

When Mr. Grasso asked if GEICO would sever ties if the signs were not installed, Attorney Loughlin stated that it had been made clear that they want to be able to identify this as a GEICO location.

Mr. Dan Brubach stated that he was the Fixed Operations Manager for all the Portsmouth Ford Auto Group. Currently GEICO had a staff supervisor who works out of their facility and they also had ties to Enterprise Car Rental. Claimants within a 25 mile radius, including into southern Maine and the surrounding seacoast area, would be directed to, and looking for, their facility.

When Chairman LeBlanc asked if the association would be terminated if they didn't receive approval for the signs, Mr. Brubach stated that they had been strongly urged to request the variance their other three facilities were granted the signage.

Mr. LeMay asked if both GEICO signs were required and Mr. Brubach stated GEICO had originally wanted three, but they were not comfortable with that amount. Mr. LeMay asked where the third one would have been located and Mr. Brubach responded it would have been on the back of the building.

Attorney Loughlin stated that the visitors coming in would not be repeat business and signs needed to be visible from both Peeverly Hill Road and West Road.

Mr. Parrott asked what the status was, with respect to City ordinances, of the car which was on the property and painted like a sign. Attorney Loughlin stated that the Code Enforcement Officer hadn't called, so he assumed it was o.k. Ms. Tillman asked if it was a registered motor vehicle and Attorney Loughlin stated he didn't know. He thought it was there on a temporary basis. Mr. Parrott commented that was what he had hoped to hear.

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 deny the petition, which was seconded for discussion by Mr. Grasso.

Mr. Jousse stated that the Zoning Ordinance was quite plain as to what was allowed and, although they were there to provide relief, these particular signs were quite large in his opinion. By reducing the size of the signs that were already there and incorporating the new logo, the applicant could accomplish what they wanted which was to advertise their business and their partnership with this insurance company. The signs would be conforming while satisfying the corporate partners and he felt that was the way to go. He stated that the variance would be contrary to the public interest and there was another method to accomplish what they were trying to do and still

remain within the constraints of the ordinance. He did not see that justice would be done by granting the variance and nothing had been mentioned about surrounding property values.

Mr. Grasso stated that the signs were 6½’ x 5’ and neither West Road nor Peverly Hill Road were that far from the building. If the signs were smaller in scale, he would be more in support. As presented and advertised, he would support the motion to deny.

Mr. Parrott stated that this was a stand-alone building and easy to find in a low speed limit area. This was a case where compliance with the Zoning Ordinance was possible and the Planning Department had provided some suggestions as to how to get into compliance. He didn’t see any hardship that could be argued.

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

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5) Petition of **Aquila Chase and Marcia N. Chase, owners**, for property located at **71 Baycliff Road Road** wherein a Variance from Article III, Section 10-10-301(&)(a) was requested to allow the replacement of the original gravel driveway with paver stone driveway located within 100’ of the salt water marsh or mean high water line where 100’ is the minimum required. Said property is shown on Assessor Plan 207 as Lot 46 and lies within the Single Residence B district.

**SPEAKING IN FAVOR OF THE PETITION**

Attorney Lynn Morse stated that the request arose out of meetings he and the owner had with City Attorney Sullivan in conjunction with the unrelated filing of a lot line adjustment by Mr. Chase. In the course of the Planning Department review, it was brought to their attention that the installation of paver stones in Mr. Chase’s driveway fell within the 100’ foot shoreline setback. Mr. Chase was unaware of this as the driveway did not require a city permit. At the recommendation of the Planning Director and the Environmental Planner, they filed a request before the Board of Adjustment to allow the paving stones to remain in place. Attorney Morse referred to the photographs they had submitted showing the driveway as it used to be situated, with packed gravel down to the area of the garage along with areas of concrete bricks and red clay bricks. Mr. Chase was endeavoring to have a more uniform surface not subject to the erosion he had experienced. Packed gravel was subject to erosion and ice and snow collection made it difficult to traverse.

Attorney Morse provided background on a right of way issue which he felt was being raised by one of the abutters. The background included information on the previous owners, the rights of lot owners in the subdivision to use the right of way, the acceptance by the City of Baycliff Road, and their claim to rights to the halfway point of the right of way. He referenced a letter in the file from Mr. Luke Weigle, a state-recognized boundary consultant. He stated that, on June 11, he had provided a letter from Mr. Gray to Mr. Holden and City Attorney Sullivan, giving approval to install paving blocks across the portion of the right of way for which Mr. Gray had an easement to his stone wall. He presented a copy of Mr. Gray’s letter for the record.

Attorney Morse stated he had addressed the various criteria in the written material, but wanted to enforce that the variance would not be contrary to the public interest. The paving bricks were an improvement to the access for the Chases to their home and access to Little Harbor. There would be no change in the essential character of the area as the driveway had served the Chase property for over 60 years, predating enactment of the 100' setback from the wetlands. The driveway was really not being altered in any other way except to provide one consistent surface instead of three. The hardship was that there was no other place or location on the property to serve as driveway and access to the garage. There was no way to avoid an encroachment into the 100' setback. In the submitted plan, there was a line showing where the 100' setback would fall and the entire house falls within that line. It would be an injustice to require that the paving bricks be removed and the gravel reinstalled. Giving an attractive appearance to the property would not diminish the value of surrounding properties.

Mr. Parrott asked if he could provide the gist of a memorandum from Mr. Gary Flaherty in the packet which cited NHDES Shoreland Rule Env-Wq 1406.

Attorney Morse stated that it covered the replacement of one surface with another. Mr. Chase had asked Mr. Flaherty to see if replacement of the paving bricks would trigger the need for any state approval, which Mr. Flaherty concluded it did not. The Department of Environmental Services would view this as replacement of one impervious surface with another.

In response to questions from Chairman LeBlanc, Attorney Morse stated that the pavers were set in sand so that water could get through. Mr. Chase added that the wetlands consultant, Mr. Flaherty, had felt that the cobblestones seem to stop the water without puddling. It goes down through the sand.

There was discussion among various Board members and Attorney Morse about the right of way and public access to the water.

Mr. Durbin asked if it were possible, were the variance to be denied, for the applicant to come back with a proposal to put in vegetation in the initial area between the paved zone and the water, which was completely devoid of vegetation. Attorney Morse stated that there was ledge in that section which was not susceptible to plantings and would disrupt access, not enhance it.

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

Mr. Ron Ulrich stated that he had lived at 46 Baycliff Road since 1988 and was speaking on behalf of his family and two other neighbors who could not attend. He distributed their letters for the record. He provided the background, from his perspective, of the lot holders' interest in, and use of, the right of way, as well as his impression of Mr. Chase's actions in installing the pavers, his impression of the legal issues, and his feelings of the impression currently given by the right of way with the pavers installed. He referenced the letter from Attorney Morse to the Board which alleged, with regard to hardship, that the gravel driveway washes out, that erosion made traversing it difficult, and that the pavers would improve drainage. Mr. Ulrich stated that the stone and gravel surface was solid and he had used the driveway in all seasons of the year. In no circumstances had it ever been difficult to drive a vehicle down the road and there was no sign of

erosion. He was unaware that either the City, Mr. Chase or the previous owner had ever effected a repair for this alleged erosion so the hardship had no basis in fact.

Mr. Ulrich continued that granting a variance would be contrary to the public interest as the right of way has changed in character since the installation of the pavers. There were no special conditions creating a hardship and the claimed erosion was a fabrication. Justice would be done by reinstalling the gravel surface. It had been claimed that the value of surrounding properties would not be diminished, claiming that the abutter most directly affected by the installation was in favor of the pavers remaining in place. Mr. Ulrich's opinion was that the other residents who use the right of way would be more affected as Mr. Gray already enjoys access to the water on his own. Should the Board decide to approve the variance, he requested that there be a provision that the applicants modify what they had done to define the boundaries of the right of way.

Mr. Jousse asked when the pavers had been installed. Mr. Ulrich stated that he believed that Attorney Morse's estimate of the Fall of 2006 was accurate. Mr. Jousse stated what he was trying to get his head around was that around November of 2006, this project was started and, only now were voices raised against it. Mr. Ulrich stated that, to his knowledge, this was the first public hearing regarding this matter.

There was some additional discussion among Board members and Mr. Ulrich regarding the access to, and use of, the right of way by the public.

Mr. Jousse noted that if he had a vested interest in a right of way and somebody discussed projected work to be done, as had been done here, he would go to City Hall and not wait two years. Mr. Ulrich stated this was not his first discussion with City Hall. He had discussions with Attorney Sullivan over the past 8 months and had spoken to Tom Richter at Public Works. He was hoping to handle this without hiring a lawyer.

Chairman LeBlanc stated that they were not considering a boundary dispute. What they were dealing with was replacing gravel with pavers and whether that was bad for the marsh or not. Who owns or has the right of way was not within their purview.

Mr. Ulrich claimed that the Board would be making a decision on land which was not the owner's property and issuing a variance for property for which the applicant did not have legal title. A significant portion of what was being requested was on property which was not the applicant's and he felt this was setting a dangerous precedent.

No one further rose to speak in opposition.

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

Attorney Morse reiterated points made in Mr. Weigle's memo and provided his viewpoint of the issues raised regarding the right of way. He stated that the neighbor speaking in opposition had originally given their consent to the project and could not see the pavers. The real issue was that they want to do something at the edge of the wetlands.

Mr. Ulrich stated that representation was inaccurate and outlined his discussions with the City regarding possible installation of a stairway up to the high water mark. Whether he could see the pavers was irrelevant as his concern was that the right of way, with the pavers, gave the impression of a private drive. He requested a re-alignment in the pattern of the pavers to make the use clear.

## **DECISION OF THE BOARD**

Mr. Parrott stated that his understanding was that they should only vote on what had been published and it was a fairly narrow issue – the replacement of the original driveway with pavers. It seemed to him that the issue was pretty specific, pretty narrow and technical. The concern within 100' of tidal salt water was whether the surface was acceptable from an erosion control point of view and the question was whether the current surface was better than the previous. It was an opinion of an expert that it was better and they have no expert testimony to the contrary. It seems that the change in pavement created a certain perception, but that was not theirs to deal with, nor was the legal ownership, and the Board can and should approve the petition.

Chairman LeBlanc asked if this was his motion to grant the petition and Mr. Parrott stated it was.

Mr. Jousse seconded the motion. He understood the objections of the abutter and how this creates a different feeling, but that has nothing to do with ownership. He agreed that the question before them was simply the replacement of pavers for gravel. He noted that the property owner had not been aware that changing the surface required a building permit because the driveway was already there. Although belated, denying this request would create a hardship. He felt the change was an improvement and should be approved.

Mr. Durbin stated that, had this come before the Board originally as simply another impervious surface, he would have asked for a better storm management plan on the property or a better pervious surface. He would have made a motion to deny or added a stipulation. Speaking solely to the driveway and not legal issues, he felt they could have come forth with a proposal to maintain the stone driveway, but also added some sort of mitigation.

Chairman LeBlanc stated that they also have to consider that it seemed as if the replacement of gravel with pavers acted as a better dam, preventing the water from getting into Little Harbor. The point of shoreland regulations was to protect the waterways.

Mr. LeMay stated that, if granted, the variance would cover half of the right of way and go with the applicant. Would Mr. Gray also have to get a variance for the half that he owns?

Chairman LeBlanc stated he didn't know.

Mr. Grasso stated he would not support the motion. He was not a big fan of approving things after the fact. He had been familiar with the neighborhood for many years and had not seen any signs of erosion. He didn't see a hardship in replacing what was there.

The motion to grant the petition failed to pass by a vote of 3 to 4, with Ms. Eaton and Messrs. Durbin, Grasso and LeMay voting against the motion. The petition was denied.



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6) Petition of **Bed, Bath & Beyond, Inc., owners**, for property located at **100 Durgin Lane** wherein a Variance from Article IX, Section 10-906(A)(2)(a)(2) was requested to allow 1,315 sf of attached signage where 716 sf is the maximum allowed. Said property is shown on Assessor Plan 239 as Lot 18 and lies within the General Business district.

Mr. Durbin was excused from this and the following petition.

SPEAKING IN FAVOR OF THE PETITION

Attorney McNeill stated that he was there with Mr. Dave Cameron from Bed, Bath & Beyond and Mr. Mark Sheaffer from the sign company. There was a history with regard to the building that preceded them because this was a unique location, for which a number of sign variances had been consistently granted. He noted that signs do not run with the building if that building was taken down. Several of the variances spoke to this application. In 1992, a variance was granted for 962 s.f. of signage, approximately 4.5 times the then maximum allowed of 100 s.f. Applying the same logic today, they would be permitted over 3,000 s.f. of signage. He stated that the current building was 10,000 s.f. smaller than the previous building, which was utilized by the Home Depot with all the signage for one company.

Attorney McNeill stated that, in the General Business District, for a shopping center of 115,000 s.f., Christmas Tree Shops would be allowed 258 s.f., Bed Bath & Beyond, 241 s.f. and the other retail use would be 217 s.f. If they applied those calculations to this site with the installation only on the front of the site as was the case with all strip malls, they would be in total compliance. The DeMoulas Shopping Center was an example of a strip mall with no signage on the sides and back and was what had been envisioned by the drafters of the ordinance, not this type of property. They were requesting 192 s.f. for the Christmas Tree Shop, 196 s.f. for Bed, Bath & Beyond, and 196 s.f. for the third use. All of those were legal. On the side facing the Hampton Inn and the parking lot, which the Planning Board has asked them to finish with banding, they were requesting signage of 146 s.f. That side was visible to the public and signage was needed in terms of locating the property. In the back, the requested signage along the highway was 210 s.f. for the Christmas Tree Shop, with 196 s.f. and 179 s.f. for the other uses. The combined signage on the front and side of the building amounted to 730 s.f., 14 s.f. over what was allowed.

Attorney McNeill showed the site plan which had been approved by the Planning Board, showing access mainly by Durgin Lane. At the head of Durgin Lane, there were signs to the site which were smaller than a mailbox. Two businesses block the view of this property. There was also an access from the Home Depot, but the sign couldn't be seen. He showed an aerial of the old Home Depot, pointing out that whether from the turnpike or the accessways, the site could not be identified without a sign. He stated that variances were not all or nothing situations and the question becomes the reasonableness of the overall signage. In terms of compliance with the ordinance, there would be not one user, but three. Attorney McNeill stated that the front of the new building was 590' from the front boundary and the Planning Board required extensive landscaping. The distance from Woodbury Avenue was 1,900'. The highway was relatively close, but without reasonable signage, no one would know what was in the building. While other communities distinguished between street frontage and highway frontage, Portsmouth does not.

Addressing the criteria, Attorney McNeill stated that the primary purpose of a sign was to provide direction and safety to the public. The uniqueness of the site was its distance from Woodbury Avenue and the need for signage on surfaces other than the front of the building. The benefit sought could not be achieved by some other method as they could not get the signage needed for three uses without asking for a variance. He maintained that, for this size building the signage was not overdone or distasteful. It was in the spirit of the ordinance to allow reasonable commercial use and reasonable notice to public of the use. He stated that there was no benefit to the public in denying the variance that would outweigh the detriment to the property owner. All of the surrounding properties were commercial and all would benefit if they were successful. The City would also benefit and they were seeking the signage to help make it possible.

Mr. Jousse stated that he had driven by on the Spaulding Turnpike and felt there was a need to have signage on the back of the building as it was a very large expanse of concrete. He didn't understand why it had to be on the side of the building because he had made it a point to turn around and look and that side couldn't be seen, only vegetation.

Attorney McNeill stated that there was a large parking lot on the side and this side only houses the Christmas Tree Shop. It was reasonable to have a sign consistent with the banding requested by the Planning Board and other components of the site. The treatment went around the corner of the building.

Mr. David Cameron, of Bed, Bath, & Beyond, stated that the dressing up and the architectural treatment was at the urging of the Technical Advisory Committee to guide people to the front entrance of the store.

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

Chairman LeBlanc announced that Ms. Rousseau was sitting in as a voting member for this and the following petition.

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

Mr. Grasso stated that this was a proposal for a site which had previously only held one business. Some of the remoteness had been alluded to and this would help the public in identifying and finding the businesses from the roadways. The hardship was that signage was needed for three new tenants, as opposed to the previous single one. The additional signage and the proposed size were appropriate for the distances from the roads. The special conditions included that distance as well as the multiple tenants. He stated that there was no other reasonable method. They could require smaller signs but they might not be useful. It was in the spirit of the ordinance to allow the

owners to identify the businesses that were there and there would be no advantage to the public in denying the variance. He felt that all the surrounding properties would benefit from these tenants.

Mr. Parrott stated that this was a rare case with unusual factors, two of which were obvious. These were high volume, high traffic stores and people would be coming from a distance and might not be familiar with Portsmouth. The access was odd, which made signage even more important. Secondly, there were now three businesses rather than the previous one, which argued for treating this as an exception and increasing their formula. He was comfortable with voting the signage requested.

Ms. Rousseau stated she agreed and would vote in favor.

Mr. Jousse asked if the maker of the motion would be agreeable to reducing the signage to what the applicant was requesting for the side and back, omitting the side view. When Mr. Grasso stated he would not, Mr. Jousse declined to propose an amendment to the motion.

The motion to grant the petition as presented and advertised was passed by a vote of 6 to 1, with Chairman LeBlanc voting against the motion.

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Mr. Grasso made a motion to suspend the 10 o'clock rule, which was seconded by Mr. Jousse and approved by unanimous voice vote.  
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7) Petition of **David M. Goulet, owner**, for property located at **1062 Banfield Road** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-402(A) were requested to allow a 14' x 16' open deck and an 8' x 12' shed creating 11.8%± building coverage where 10% is the maximum allowed. Said property is shown on Assessor Plan 283 as Lot 36 and lies within the Single Residence A district.

SPEAKING IN FAVOR OF THE PETITION

Ms. Karen Gay stated she was speaking on behalf of the owner, Mr. Goulet. The property was zoned Single Residence A so that the building coverage was based on a one acre parcel of land. This parcel was .39% of an acre, which would only allow 1,700 s.f. of building coverage, while an acre would allow almost 5,000 s.f., a big difference. They were proposing a deck by the pool and an 8' x 12' shed. She stated that they can't put in a deck without a variance, which would affect their enjoyment of the back yard. They had talked with the property owners and there was no opposition to their proposal. This wouldn't diminish the value of surrounding properties.

In response to questions from Chairman LeBlanc and Mr. Jousse, Ms. Gay stated that the deck was 42" off the ground. There was a smaller existing deck, but they wanted to add to it and put in a locking gate. They did not design the deck to go straight out from the house as they needed to leave access room to the septic which was on the other side of the pool. When Mr. Grasso asked if they had factored in what was needed for the pool, Ms. Gay stated the pool was already there. They had gone in for the building permit for the pool and didn't realize that they didn't have that

much building coverage available. She added that they were only 1.8% over the coverage allowed.

Mr. Dick Goulet stated that, in the far corner on the Ocean Road side, the area was not usable as it was all ledge. He wanted to leave access in the event they had to redo the leach field. The driveway is all excavated so they can't get in that way.

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

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

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

Mr. Parrott stated that this seemed straightforward. The lot can support this coverage. The problem was the one acre zoning. There would be no public interest in a proposed deck in the middle of the lot, adjacent to an existing pool and deck. There would be no encroaching on neighbors. The special condition was that this was an unusual lot in a zone requiring one acre lots. A variance was the only way to put in structures over 18" high which affect the lot coverage. He stated that a 16' x 14' deck was not huge and making it under 18" high would not serve its purpose. It was in the spirit of the ordinance to allow the property owners to enjoy their property, provided they did not infringe on neighbors which, in his judgment, this did not. This was only a slight amount over the allowed coverage. He stated that the deck and shed would not be seen from the street and shouldn't have any effect on surrounding property values.

Mr. Grasso stated that this was a minor request. They had heard testimony as to the presence of ledge in the back yard and the location of the leach field. There was no better placement for the structures.

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

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**III. ADJOURNMENT**

It was moved, seconded and passed to adjourn the meeting at 10:50 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary