

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

**EILEEN DONDERO FOLEY COUNCIL CHAMBERS**

**7:00 p.m.**

**FEBRUARY 17, 2009**

**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

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**I. OLD BUSINESS**

Chairman LeBlanc advised that Mr. Durbin would be sitting in as a voting member in Mr. Witham's absence.

A) Approval of Minutes – January 20, 2009

It was moved, seconded and passed by unanimous voice vote to approve the Minutes with one minor clerical correction.

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B) Request for a One-Year Extension of Variance, granted February 19, 2008, for property located at 13 Salter Street.

Mr. Grasso made a motion to grant a one year extension of the variance, which was seconded by Mr. LeMay.

Mr. Grasso noted that several government bodies were also involved in the approval process which may have delayed the start of construction. This was the first extension request which he saw no problem in granting. Mr. LeMay concurred.

The motion to grant a one year extension of the variance through February 19, 2010 was passed by a unanimous vote of 7 to 0.

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C) Request for a One-Year Extension of Variance, granted March 18, 2008, for property located at 72 Mirona Road.

Mr. Jousse made a motion to grant a one year extension of the variance, which was seconded by Mr. Parrott.

Mr. Jousse stated that you had to go through a whole process after approval, including working with banks and other agencies. This could delay the project and he felt they should allow the applicant the one year extension they were requesting. Mr. Parrott stated that he had nothing to add.

The motion to grant a one year extension of the variance through March 18, 2010 was passed by a unanimous vote of 7 to 0.

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## II. PUBLIC HEARINGS

1) Petition of **Hunking Holdings LLC., owner**, for property located at **33 Hunking Street** wherein the following were requested: 1) a Variance from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) to allow: a) a 30 sf porch with a 7'6"± left side setback where 10' is the minimum required, b) a 404 sf two story rear addition with a 23'6"± rear setback where 25' is the minimum required; and, c) a left side dormer with a 6'8" left side setback where 10' is the minimum required, and 2) a Variance from Article IV, Section 10-402(B) to allow a 14' x 24' detached one story garage with a 5'± right side setback where 10' is the minimum required. Said property is shown on Assessor Plan 103 as Lot 38 and lies within the General Residence B and Historic A districts.

### SPEAKING IN FAVOR OF THE PETITION

Ms. Anne Whitney distributed a letter and a petition of support from number of abutters. After feedback from some neighbors, they had decided to make the rear, two story addition conform to the 25' setback and are eliminating the request for that relief. This will also further reduce the lot coverage by 24 s.f. Referring to the photographs they had provided, she indicated the existing one story structure with an enclosed porch at the front of the residence. This encroached into the front setback and they were proposing to remove it entirely, landscape and rebuild a new 5' x 6' porch with steps. As shown on the site plan, this would reduce the nonconformity to a 7.65' setback.

Ms. Whitney stated that the second variance was for a dormer on the left which would be a vertical expansion of an existing nonconforming structure. The current setback was plus or minus 8' and the dormer would be set back 6.8'. The third item was the 14' x 24' detached garage. This would be a little wider as they would be removing the shed which was on the property line and they would like to be able to have some storage. They had pulled the garage back 12' from the front property line. On the side there was an existing retaining wall. They were trying to get 18' for two parking spaces and a third in the garage. If need be, another car could pull in on the right side perpendicular to the garage. She maintained that this would not be out of line in this neighborhood where 5' setbacks were not unusual. They had allowed for open space between the existing structure and the Tobias Lear House.

Ms. Whitney referred to the photographs showing the street view and the rear view with the shed which would be removed. Also included in the packet were floor plans and the existing and proposed elevations. The plans would be altered to bring the rear addition into conformity. The front porch would be improving a nonconforming situation where there was 5' of grade. They felt an enclosure was needed to tie into the house. They were also adding landscaping under 18". The purpose of the dormer was to add needed space. Regarding the windows in the dormer, if they were concerned with privacy for the abutter, they were willing to part with the bedroom and bathroom windows to make the abutter more comfortable. The dormer would not exceed the height of the existing structure. When Mr. Jousse commented that a window in a bathroom was a nice feature, Ms. Whitney stated they could probably put in a tiny skylight to allow light and ventilation without any privacy issues.

Mr. Jousse asked about one of the signers of the petition, Julie Capobianco, whose address was listed as "WGTL Pres. Board." Ms. Whitney noted that she was going to speak that evening and Ms. Capobianco indicated from the audience that she was representing a group.

Mr. Grasso asked what was between the garage and the house on page 3 or 5 in the lower corner. Ms. Whitney stated that was the grade. If they look at the site plan, they could see a sort of rough wall and step from the driveway into the yard. It almost looks like a deck, but it was a natural change in grade. At Mr. Grasso's request, she identified the location of the grade and steps on the photograph.

Ms. Rousseau commented that, in the City of Portsmouth, you hear a great deal about maintaining historical character. She asked about the age and history of the house. Was it an old colonial? Ms. Whitney stated the house was not. It was probably early turn of the century and the front porch was put on at some point and enclosed. She described some of the materials and construction in the house indicating its age.

Mr. Jousse asked if they could bring the garage in closer to the house to create a greater setback. Ms. Whitney replied that it was a little hard for two cars to pull in and out and keep the 18' for parking. She stated that the street had a narrow turning radius. When Ms. Eaton stated that she was surprised that the garage was not attached, Ms. Whitney stated that they were trying to preserve some open space. Some of the nicest views of the house are along that edge, including a water view, and they would not want to block them. When Ms. Eaton asked if they now had three parking spaces, Ms. Whitney replied they did. There was actually a big paved area they could see in the photographs.

Chairman LeBlanc stated that he had difficulty with the garage being where it was. The area was compact with the houses "cheek by jowl" and he found it objectionable to build a structure within 10' of the property line. Ms. Eaton concurred.

Ms. Whitney stated they were trying to lose the back shed space while keeping some storage. They didn't want to squeeze right up against the main structure. The only

option they could see was to go down to 12' in width for a 7' or 8' setback. That would be the limit to which they could go and beyond that, it would not be feasible.

Ms. Eaton asked about the 24' length and Ms. Whitney responded that they were trying to get in a car and some lawn equipment formerly held in the shed. Generally, for a car alone, you would need not much less than 20'. Mr. Parrott noted that they had a 65' wide lot with a house right on the left side. He felt the 10' setback was pretty modest and would like to see some redesign to bring the garage off the line. Ms. Whitney stated that, as she had indicated, they could reduce the setback to 8', but they need to keep in mind that Hunking Street was narrow. They could maybe get two cars into 16', but with the turning on that street, it would be difficult.

Ms. Judy Capobianco stated that she lived at 199 Gate Street and was an abutter. She was also President of the Wentworth Gardner Tobias Lear House. As far as the garage being close to the line, they didn't see a problem with it, but they did ask Peter if he would have a survey done on that side to determine where the lines really were. They also asked that he work with them on the fencing. Two other abutters were there who live on Gardner Street and were also up against the Wentworth Gardner Tobias Lear. They asked that the fencing go across so that it would look the same and Peter agreed. They had faith that he would do a good job which would fit in with the neighborhood.

Chairman LeBlanc asked if there would be any problem with water running off into the cellar of the Tobias Lear House. Ms. Capobianco stated that she hoped the applicants would take care of that.

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

Mr. Hugh Jenks stated that he had lived at 25 Hunking Street since 1996 and was a direct abutter to the west of the property. He stated that the neighborhood was dense and that he felt this was an expansion plan which would balloon the footprint in three directions at once, infringing on all sides. He claimed that the applicant did not intend to live there and was pushing the envelope. He stated that 33 Hunking Street was already nonconforming and did not meet the minimum lot size requirement. He outlined a history of the neighborhood and described how the closeness on the street side was offset by the openness in back. He was concerned about the risk to his outdoor space and view and value to his property by building a "wall" in the back. He felt the application flew in the face of the purposes of the ordinance regarding overcrowding and preserving land, light and air and the quality of life. The zoning ordinance should be enforced in this most crowded section of the city and what he viewed as improving property for a greater return on investment was not grounds for a claim of hardship.

Chairman LeBlanc asked if he was aware that the applicant had adapted his plan so that there was no need for a variance on the rear ell and the structure could be built as revised. Mr. Jenks stated he believed that the hearing was what had been advertised and Chairman LeBlanc clarified that they could grant less and, in this case, the space off the back was

dropped from the petition. Mr. Jenks insisted that was just a “throw-away” in case the plan had opposition.

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

Mr. Jeff Bolster stated that he lived at 44 Gardner Street. He felt the renovation would be an upgrade but had some reservations as to scale, specifically the dormers, the addition to the back and the garage, as well as the shade tree.

Ms. Whitney clarified that they will be maintaining the tree. The porch was an improvement on the nonconformity and the left dormer adds needed storage. She stated again that they will be revising the back to be more conforming which was not a “throw-away”, but came up in their discussions. She felt that a one room size addition was not massive and was in keeping with the architecture.

Mr. Peter Morin stated that he was the applicant and was considering living in the home. While he had bought a couple of houses, he was not a developer and had lived in Portsmouth since 1993. He referenced a project on Pleasant Street which he felt was a good example of the types of renovations he has done. He confirmed that they were going to do everything to keep the tree intact, except for some needed pruning.

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

### **DECISION OF THE BOARD**

Mr. Jousse stated that he would like to take his motion in three pieces. First he moved that part 1)(a) of the petition be granted, to allow the front porch. The motion was seconded by Mr. Parrott.

Mr. Jousse stated that the porch would be an improvement over steps which had been open to the weather. The structure would be smaller and less nonconforming. He stated that the variance would not be contrary to the public interest. The special conditions were the need to remove the existing porch, which would be replaced by a smaller structure. This would be in the spirit of the ordinance; justice would be done; and nothing had been presented as to the impact of this variance on the value of surrounding properties.

Mr. Parrott agreed that it would make that portion of the property less nonconforming and would be more attractive.

The motion to grant part 1)(a) of the petition, the front porch, was passed by a unanimous vote of 7 to 0.

Mr. Jousse made a motion to deny part 1)(c), the left side dormer, and part 2), the garage, which was seconded by Ms. Eaton.

Mr. Jousse stated that a garage was a nice thing, but nothing had been presented as to a hardship requiring one. He noted that there were at least two parking spaces on the property and the garage could be moved in closer. He felt that the dormer was really large and not in period with anything in the neighborhood. It was confusing as they were told it was represented as enlarging the attic space, but also that the dormer was to be part of a bathroom and bedroom. He didn't feel anything had been presented as to why this was really needed.

Ms. Eaton stated that a third story dormer was inappropriate given the character of the neighborhood and she felt it would negatively impact property values. The garage within the setback was inappropriate and against the spirit of the ordinance.

When Mr. Durbin asked if 1)(b) had been withdrawn procedurally and Chairman LeBlanc confirmed it had.

Chairman LeBlanc noted that one of the speakers did mention that property values would be adversely affected by the dormer on the left side of the property and that was a crucial issue with the Board.

The motion to deny part 1)(c) and part 2) of the petition was passed by a unanimous vote of 7 to 0.

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2) Petition of **D'Angelo, Inc., owner**, for property located at **1981 Woodbury Avenue** wherein the following were requested: 1) a Variance from Article IX, Section 10-906(A)(2)(b) to allow 158 sf of internally illuminated channel letter flush mounted signage where 65 sf of signage is the maximum allowed, and 2) a Variance from Article IX, Section 10-901(E)(2) to allow said sign to be located above the level of the roof where signs are not allowed to be located. Said property is shown on Assessor Plan 215 as Lot 7 and lies within the General Business district. Case # 2-2

Chairman LeBlanc announced that this petition had been withdrawn by the applicant.

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3) Petition of **John W. and Debora D. Mayer, owners**, for property located at **68 Cabot Street** wherein the following were requested: 1) a Variance from Article IV, Section 10-402(B) to allow a 14' x 24'8" section of an existing garage to be rebuilt in conjunction with previously approved additions with a 1'± rear setback and a 0' left side setback where 13'6"± is the minimum required for both rear and left side setbacks and 2) a Variance from Article III, Section 10-302(A) to allow 44%± building coverage where 25% is the maximum allowed. Said property is shown on Assessor Plan 135 as Lot 52 and lies within the Apartment district. Case # 2-3

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

Ms. Anne Whitney submitted a list of immediate abutters who supported, or had no objection to, the petition.

Mr. Jousse asked Ms. Tillman if this had not been granted in March of last year. Ms. Tillman responded that the Board had based their previous decision on the existing garage remaining and they now found it necessary to demolish that structure.

Ms. Whitney stated that, when they received approval in March of '08 to take off the shed portion of the structure, the garage seemed fairly straight and solid. In early fall, they had started foundation work and found some rot. They took care of the rot and did some foundation repairs and, in December, started taking off the sheathing and working with the existing structure. They discovered more extensive rot and, as could be seen from the submitted photographs, an inconsistency of materials. They tried to work with the situation, but realized that the cost to restore would far exceed the cost to rebuild in kind. She noted that the Planning Department memorandum had mentioned an opportunity to shift the location of the garage, but the foundation for the rebuilt portion was already in and repairs were already made to the existing foundation, which was why they were asking to rebuild it in kind. If they cannot get approval, they would have to rebuild it piece by piece.

Chairman LeBlanc stated that they were, then, going to demolish the current part of the garage that was falling apart and rebuild it in the same likeness. Ms. Whitney stated that there might be one or two window changes, which they could see in the plans, but the volume on the site would remain the same.

Mr. Grasso asked how they could build it with a zero setback and Ms. Whitney reiterated that it was necessary because of the existing foundation. They had talked to the immediate abutter who didn't have a problem with their proposal. No one stood when Mr. Grasso asked if the abutter was there.

Mr. John Mayer stated that he was the property owner. With regard to the question of access with a zero setback, the project started with the intent to restore and reside and make the property useful and the neighboring property owners, with whom they have a good relationship, recognize the benefit from the project. They enjoy restoring properties and hoped that, if they stripped away the sheathing, they would find good structure. Instead, they found generations of changes with all different types of lumber. Their goal was to maintain the structures that were on the site, which now also involved a reconstruction.

In response to a question from Ms. Rousseau about whether they sought a contractor with a background in preserving historical resources, Mr. Mayer stated they have used this contractor in the past and he was very experienced in the reconstruction of historical buildings.

Mr. Parrott asked what the foundation had been when they started and Mr. Mayer stated it was cinderblock. Once they did the demolition of the shed, they exposed foundation

along the north side which had been enveloped with concrete poured in the 1920's and one side was rubble stone which had decayed. They excavated to cinderblock and rebuilt with that material.

Mr. Parrott stated he was trying to envision how any substantial work had been done on the foundation without discovering the sills were rotted. Ms. Whitney referred to the photographs to show what they encountered along the existing building. In the back view photograph, they could see where they had patched in at the corner to connect with the older cinderblock. Where they found the really bad foundation was where they took down the old shed. The rest had seemed to be in good shape. When Mr. Parrott asked how many lineal feet of new foundation had actually been installed, Ms. Whitney stated a little along the length of the building and 8' to 9' where it wraps around the corner. Part was cinderblock and part poured. She confirmed that because there was good existing foundation was one reason to retain it. It was all tied together and, if they had to move the garage, they would have to remove the foundation and start over.

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

With no one rising, the public hearing was closed.

### **DECISION OF THE BOARD**

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

Mr. Jousse stated that this was a replacement in kind. Although the materials they saw in the photographs looked fairly good, in renovation there was surprise after surprise. It was not economically feasible to make do with patchwork and it was better to tear it down and start over. While he didn't like to see old structures come down, it looked as if it was on its way already.

Mr. Jousse stated that granting the petition would not be contrary to the public interest. The special conditions and hardship were that the applicant had been proposing to retain the structure but could not do so. They will be rebuilding on the same footprint with no further encroachment. Nothing will be different except a new structure on the foundation. He stated that there was no other means to achieve the desired objective, as it was not feasible to move the foundation and incur excessive expense while the existing foundation, and the new foundation which tied in, were already in place. He stated that justice would be done and the variance would be in the spirit of the ordinance. The 44% coverage was tied to the variance granted in March of last year and there was no change to the coverage. They were just replacing a garage that was falling apart.

Mr. LeMay stated that the arguments for granting the variance the previous year still stood. It was clear that the applicant was working in good faith when he found this problem and this was a practical solution.



Mr. Grasso stated that he originally had a problem with the zero setback, but the explanation of why this could not be achieved by some other reasonably feasible method carried a lot of weight. They were mid-project when the problems came up and he could support the motion.

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 by unanimous voice vote to adjourn the meeting at 8:30 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary