

**REGULAR MEETING
BOARD OF ADJUSTMENT
PORTSMOUTH, NEW HAMPSHIRE
CITY COUNCIL CHAMBERS**

7:00 P.M.

November 20, 2001

PLEASE NOTE: DUE TO THE LENGTH OF THE AGENDA, PUBLIC HEARINGS #13 THROUGH #24 WILL BE HEARD THE FOLLOWING TUESDAY, NOVEMBER 27, 2001 AT 7:00 P.M. IN THE CITY COUNCIL CHAMBERS

MEMBERS PRESENT: Chairman, Jack Blalock, Vice-Chairman Charles LeBlanc; James Horrigan; Alain Jousse; Bob Marchewka; Chris Rogers; and, Nate Holloway

MEMBERS EXCUSED: Alternates, David Witham and Ginny Weeks

ALSO PRESENT: Lucy Tillman, Planner I

Chairman Blalock advised the public that application #2 for Joseph Almeida had been withdrawn to the December 18, 2001 meeting and that application #6 for the Getty Gas Station has been permanently withdrawn.

I. APPROVAL OF MINUTES

Vice-Chairman LeBlanc made a motion to approve the minutes from the October 16, 2001 meeting; Mr. Rogers seconded and were approved unanimously with a 7 – 0 vote.

II. OLD BUSINESS

A) Petition of Joseph Arnstein, owner, applicant, for property located on Foch Avenue wherein a Variance from Article III, Section 10-302(A) is requested to construct a dwelling creating a front setback of 10' where 30' is the minimum allowed. Said property is shown on Assessor Plan 233 as Lot 144 and lies within the Single Residence B district. This application was tabled at the October 16, 2001 meeting to the November 20, 2001 meeting.

Mr. Holloway made a motion to take the application off the table; Vice-Chairman LeBlanc seconded and was approved unanimously with a 7 – 0 vote.

SPEAKING IN FAVOR OF THE PETITION

Attorney John P. McGee, Jr., representing the owner, stated the applicant owns a vacant lot on Foch Avenue as well as an adjacent vacant lot. The lot in question has wetlands on it; therefore, a Conditional Use Permit has been sought from the Planning Board where we received approval to construct a dwelling. There will be minimal impact to the wetlands to allow our application to construct a dwelling. The proposed driveway will also be located away from the wetlands area. The lot has an odd shape and creates a hardship making it difficult to use the land. We are requesting a Variance to allow a 10' front setback where 30' is required.

There being no further speakers, the Public Hearing was closed.

DECISION OF THE BOARD

Mr. Rogers made a motion to grant the application as presented and advertised; Vice-Chairman LeBlanc seconded. Mr. Rogers stated there is a hardship in this area because of the wetlands on one side of the lot as well as the peculiar shape of the lot. There will be no diminution to the surrounding area to allow the dwelling. Vice-Chairman LeBlanc stated he agreed and added that the wetlands will be preserved.

The motion to grant passed unanimously with a 7 – 0 vote.

B) Request for a Rehearing for property owned by Robert Byrnes and Patricia Tobey located at 41 Salter Street requested by Joan Davis and Charles Allard of 35 Salter Street. Said property is shown on Assessor Plan 102 as Lot 030 and lies within the Waterfront Business and Historic A districts.

Mr. Rogers made a motion to deny the request for rehearing; Vice-Chairman LeBlanc seconded. Mr. Rogers stated there is no new evidence; however, there were a lot innuendoes and that the Board erred in their decision made at that meeting. Vice-Chairman LeBlanc stated that Mr. Allard, the abutter has indicated in his request that he did not have enough time to present his application. He feels there was adequate time, as given to all applicants, and added that this application can be denied.

Mr. Horrigan stated he will support the motion; however, he did not agree with the last phrase in Attorney Lyons letter that indicated Mr. Allard did not have the right to file this motion since he is not the property owner or a licensed attorney.

The motion to deny passed unanimously with a 7 – 0 vote.

C) Discussion concerning motion signs as determined by the Assistant Building Inspector.

Vice-Chairman LeBlanc made a motion that this item be moved to the end of tonight's Agenda; Mr. Rogers seconded and all approved unanimously with a 7 – 0 vote.

III. PUBLIC HEARINGS

1) Petition of C-Chase Properties, LLC, owner, d/b/a Seacoast Mazda for property located at 180 Spaulding Turnpike wherein a Variance from Article IX, Section 10-908 Table 14 is requested to allow the following: a) 105 s.f. free-standing internally lit sign 29'10" high where 20' is the maximum height allowed creating a 0' front setback where 20' is the minimum allowed; and, b) a 48 s.f. free-standing sign internally lit creating a 0' front setback where 20' is the minimum allowed. Said property is shown on Assessor Plan 236 as Lot 039 and lies within the General Business district. This application was tabled at the October 16, 2001 meeting to the November 20, 2001 meeting.

Mr. Holloway moved that the application be taken off the table; Vice-Chairman LeBlanc seconded and all approved with a 7 – 0 vote.

SPEAKING IN FAVOR OF THE PETITION

Mr. Doug Miles, the owner of the property, stated that the existing signs have been there for over 40 years. He stated the application was tabled at the October 16, 2001 meeting because the advertisement read that the signs were to be externally lit where they will be internally lit which will not create any further light on the adjacent residential neighborhood.

Vice-Chairman LeBlanc asked how far the existing fence is from the Spaulding Turnpike? Mr. Miles replied approximately 75'.

There being no further speakers, the Public Hearing was closed.

DECISION OF THE BOARD

Mr. Rogers made a motion to grant the application as presented and advertised; Mr. Jousse seconded. Mr. Rogers stated he did not feel the intensity of light would be increased on the residential area and will have a minimum affect on the surrounding area. It is within the public interest to erect a more modern sign; therefore, this can be granted. Mr. Jousse stated he agreed and added times are changing and the applicant needs to modernize.

Mr. Horrigan stated he will vote against the motion because he is not convinced that the Mazda sign, which is being moved, has a hardship. He feels that sign could be placed to be in conformance with the other sign that is grandfathered.

The motion to grant passed with a 5 – 2 vote with Mr. Horrigan and Vice-Chairman LeBlanc voting in the negative.

2) Petition of Joseph J. Almeida, owner, for property located at 37 Prospect Street wherein a Variance from Article II, Section 10-206(4) is requested to allow the existing barn and a portion of the first floor of the existing single family dwelling to be converted into a second dwelling unit on a lot having 5,310 sf of lot area where 6,000 sf (3,000 sf per dwelling unit) of lot area is the minimum required for two dwelling units. Said property is shown on Assessor Plan 141 as Lot 16 and lies within the General Residence A and Historic A districts.

At the request of the applicant, this application was tabled to the December 18, 2001 meeting.

3) Petition of Steve Kelm, owner, for property located at 5 – 7 South Mill Street wherein the following are requested to allow a lot line relocation between 5 - 7 South Mill Street and 18 Pickering Street. The following Variances are required for 5-7 South Mill Street: 1) a Variance from Article III, Section 10-302(A) to allow: a) the lot area to be reduced from 4,034 sf to 3,202 sf where 5,000 sf is the minimum lot area required for a conforming lot, b) building coverage to be increased from 38% to 48% where 25% is the maximum allowed, and 2) a Variance from Article II, Section 10-206(4) to allow 1,067 sf per dwelling unit where 3,000 sf per dwelling unit is the minimum required and 1,345 sf currently exists. Said property is shown on Assessor Plan 102 as Lot 15 and lies within the General Residence B and Historic A districts.

SPEAKING IN FAVOR OF THE PETITION

Mr. Steve Kelm, the property owner of 5 – 7 South Mill Street, stated the owner of property located at 18 Pickering Street, would like a piece of his property that would make his back yard useable and would also make his lot more conforming. This request has received Preliminary approval from the Planning Department pending approval from this Board.

There being no further speakers, the Public Hearing was closed.

DECISION OF THE BOARD

Vice-Chairman LeBlanc made a motion to grant the request as advertised and presented; Mr. Rogers seconded. Vice-Chairman LeBlanc stated the amount of property being transferred is a small amount and will not affect any other properties in the area. The property on Pickering Street will have a more reasonable enjoyment because their back yard will be enlarged. Mr. Rogers agreed and added that this lot line adjustment will not deter from other properties on South Mill Street.

Chairman Blalock stated that nothing changes except on paper and is almost an unnecessary needless restriction.

The motion to grant passed unanimously with a 7 – 0 vote.

4) Petition of Daniel and Lisa Schwartz, owners, of 9 Middle Road and Peter and Meg Middleton, owners of 76 – 78 Lawrence wherein a Variance from Article III, Section 10-302(A) is requested to allow a lot line relocation resulting in a 2.8' rear yard for the existing 20.4' x 27.4' garage located at 9 Middle Road where 10.2' is the minimum required. Said property is shown on Assessor Plan 152 as Lots 46 and 47 and lie within the General Residence A district.

SPEAKING IN FAVOR OF THE PETITION

Mr. Peter Middleton, the owner of 76-78 Lawrence Street, stated this application is similar to the previous application where a lot line relocation is being requested to straighten out the lot. We have received preliminary approval from the Planning Board pending approval from this Board.

There being no further speakers, the Public Hearing was closed.

DECISION OF THE BOARD

Mr. Rogers made a motion to grant as presented and advertised; Mr. Horrigan seconded. Mr. Rogers stated this request is similar to the previous application. The applicants are requesting to straighten out the lot line and will not be a detriment to either property; therefore, this request can be granted. It is a very minimal request. Mr. Horrigan stated he agreed and added that this is a minor adjustment.

The motion to grant passed unanimously with a 7 – 0 vote.

5) Petition of 55 Congress Street Condo Association, owner, AT&T Wireless, applicant, for property located at 55 Congress Street wherein a Special Exception as allowed in Article II, Section 10-208(51) is requested to allow one additional telecommunication equipment cabinet to the existing four cabinets on the roof. Said property is shown on Assessor Plan 117 as Lot 9 and lies within the Central Business B and Historic A districts.

SPEAKING IN FAVOR OF THE PETITION

Ms. Brenda Clark, representing AT&T Wireless, stated they are proposing to add an additional 5'6" x 2'4' wide cabinet to an existing 18' long beam on the roof. The cabinet will be screened as the others are. There will be no additional antennas added on the roof. The cabinet is for telecommunication for wireless cell phones.

Mr. Horrigan asked if the cabinets would emit any radiation? Mr. Clark replied definitely not.

There being no further speakers, the Public Hearing was closed.

DECISION OF THE BOARD

Mr. Horrigan made a motion to accept the application as advertised and presented; Mr. Rogers seconded. Mr. Horrigan stated this request is for a Special Exception and there will be no hazards created for the use. The cabinet will not be seen from the street. Mr. Rogers stated he agreed and added the criteria has been met to grant the Special Exception and will not impose any problems to the area. Service will be increased for cell phones in the area; therefore, this request can be granted.

Chairman Blalock stated a Special Exception can be granted if all the criteria has been met.

The motion to grant passed unanimously with a 7 – 0 vote.

6) Petition of Getty Petroleum, owner, Tony's Getty Mart, applicant, for property located at 1815 Woodbury Avenue wherein a Variance from Article II, Section 10-208 is requested to allow the outdoor storage of one U-Haul truck in conjunction with a rental office. Said property is shown on Assessor Plan 215 as Lot 13 and lies within the General Business district.

At the request of the applicant, this application has been withdrawn.

7) Petition of Hasibe A. Kaya, owner, Unal Kaya Davis, applicant, for property located at 374 Lincoln Avenue wherein a Special Exception as allowed in Article II, Section 10-206(13)(b) is requested to allow up to 12 children for an in-home daycare. Said property is shown on Assessor Plan 133 as Lot 1 and lies within the General Residence A district.

SPEAKING IN FAVOR OF THE PETITION

Susan Denenberg, Esquire, representing the owner and the applicant, stated her client is requesting a Special Exception to allow a day care for up to 12 children. Parking would come through via Broad Street that will eliminate a traffic situation. The driveway will be hard gravel. Attorney Denenberg submitted a petition signed by abutters stating they had no objection to the

day care. The hours of operation will be from 8:00 a.m. to 5:00 p.m. daily Monday through Friday.

Ms. Maxine Welsh, a direct abutter across the street, stated she purchased her home in 1958 and has no objection to the proposed driveway. If the parking will be off Broad Street, the abutters on Lincoln Avenue will not see the vehicles at all. She added that the owner and the applicant are the nicest neighbors anybody can have and it would be very nice to see this application granted.

Ms. Linda Panori stated she agreed and asked if the operation would be open on weekends. Attorney Denenberg replied the hours of operation are only Monday thru Friday 8:00 a.m. to 5:00 p.m. Ms. Panori asked that this application be granted because a day care is very much needed.

Mr. Holloway asked how many employees there would be at the site? Attorney Denenberg replied only two being Ms. Hasibe Kaya and Ms. Unal Davis

Attorney Denenberg stated the existing lobster traps will be removed from the yard.

There being no further speakers, the Public Hearing was closed.

DECISION OF THE BOARD

Mr. Rogers made a motion to grant the application as advertised and presented; Vice-Chairman LeBlanc seconded and added a stipulations that the hours of operation be from Monday thru Friday 8:00 a.m. to 5:00 p.m. as presented. Mr. Rogers agreed to the stipulation and added there is a great need in the community for this type of service. There will be no intensification of traffic in the area and the proposed location is a good place for a day care. There is available parking for what their needs require. The applicant is only asking for the use to be allowed; therefore, this request can be granted. Vice-Chairman LeBlanc stated he agreed and added the customers will arrive via Broad Street and will eliminate any safety concerns or traffic problems.

The motion to grant with the above stipulation passed unanimously with a 7 – 0 vote.

8) Petition of Jean C. Odiorne, owner, for property located at 17 Pray Street wherein a Variance from Article III, Section 10-302(A) is requested to allow an 18' x 22' attached garage with a 1' rear yard where 25' is the minimum required. Said property is shown on Assessor Plan 102 as Lot 37 and lies within the General Residence B and Historic A districts.

SPEAKING IN FAVOR OF THE PETITION

Mr. Greg Odiorne, the owner's son, stated the existing garage is very small and in serious need of repair. He feels that it was built to house the late Model T. He is proposing to rebuild it and make it large enough to house a lawn mower and garden equipment. He presented a petition signed by abutters stating they had no objection to the application.

Mr. Odiorne stated that existing garage is built right on the property line; however, the new garage will be moved back a foot making the lot less nonconforming. The garage is being built up against the side of the house to allow for an entrance into the house for his mother.

There being no further speakers, the Public Hearing was closed.

DECISION OF THE BOARD

Mr. Horrigan made a motion to accept the application as advertised and presented. Mr. Rogers seconded. Mr. Horrigan stated that to grant the request will make the property less nonconforming and would be within the public interest to replace this structure. Mr. Rogers stated he agreed and added the existing garage is in very sad shape. The proposed garage will not interfere with any neighbors; therefore, this request can be granted.

The motion to grant passed unanimously with a 7 – 0 vote.

9) Petition of James J. Reilley, owner, for property located at 21 Sanderling Way wherein the following are requested: 1) a Variance from Article II, Section 10-212(F)(2) to allow a gift packing business where products to be wrapped are delivered by tractor trailer truck and shipped out by UPS in a district where such use is not allowed, and 2) a Variance from Article XII, Section 10-1204 Table 15 to allow no parking to be provided for the business where 1 parking space is required for the business. Said property is shown on Assessor Plan 217 as Lot 2-1823 and lies within the OR/MV district.

Since there was no one present to speak to the application, Vice-Chairman LeBlanc made a motion to table the application to the December meeting; Mr. Jousse seconded. Vice-Chairman LeBlanc stated this application is causing an uproar in the neighborhood. Mr. Jousse stated that by tabling to another month will give the applicant a chance to modify his plan.

At this time Chairman Blalock read a letter received from a direct abutter in opposition to this application indicating that large UPS trucks were making many stops at this house and is interfering with reasonable use of his property. Chairman Blalock then read a letter from John Madden, the Management Company of Osprey Landing, indicating that the streets are narrow and well traveled and that there should not be any trucks on the street to interfere with the traffic.

Ms. Linda Panori, the President of SOHO (Save our Homes Organization) indicating that she objected to the tractor trailer trucks coming to the neighborhood to drop off and pick up merchandise. The home in question is located on a busy corner as well as having playgrounds in the area and would be within the best interest of the neighborhood to deny the request.

Chairman Blalock stated that every applicant is guaranteed due process and asked that we get a legal opinion on what happens when a petitioner does not show up for his application.

Mr. Rogers made a motion that the applicant should be tabled to a time certain.

Vice-Chairman LeBlanc stated if the applicant does not show up again then it should be denied, but to deny it at this time would be unfair. Vice-Chairman LeBlanc stated that we should table this application to December and stipulate that abutters be notified again.

The motion to table to December 18, 2001 with the stipulation to notify abutters a second time passed with a 6 – 1 vote with Mr. Rogers voting in the negative.

10) Petition of Wrens Nest Motel Corp., owner, for property located 3548 Lafayette Road wherein a Variance from Article II, Section 10-206 is requested to allow an existing building to be converted into a restaurant with a bar area and dance floor and 28 new parking spaces in a district where such use is not allowed. Said property is shown on Assessor Plan 297 as Lot 6 and lies in the Single Residence A district.

SPEAKING IN FAVOR OF THE PETITION

Mr. Gary Bowmar, the owner of the property, stated he was proposing an up-scale restaurant with entertainment and will be located on the back corner of the property. The hours of operation will be 4:00 p.m. to 9:00 or 10:00 p.m. on Tuesday thru Saturday and on Sunday from 12:00 noon to 6:00 p.m. We will be closed on Mondays.

Mr. Horrigan asked how the noise issue would be addressed? Mr. Bowmar replied the walls are very thick being 6-1/2" concrete.

Mr. Marchewka asked what this particular area is being used for at the present time? Mr. Bowmar replied it is vacant at the present time and added that he is having the trailer removed from the property. There are no residences in the area; therefore, the only people involved would be his own guests.

Mr. Wayne Semprini, the owner of the property at 3510 Lafayette Road, stated Mr. Bowmar has made a very nice inn and the proposed lounge will compliment the property as well as the business and wanted to go on record as being in favor of the petition.

There being no further speakers, the Public Hearing was closed.

DECISION OF THE BOARD

Mr. Horrigan made a motion to grant the application as presented and advertised; Mr. Rogers seconded. Mr. Horrigan stated that this application passes the Simplex test for hardship has been met in meeting the three criteria; therefore, this request can be granted. Mr. Rogers stated he agreed and added this application is a textbook case due to the Simplex test. There will be no detriment to surrounding property since there will not be a rowdy crowd attending.

Vice-Chairman LeBlanc stated he wanted to add a stipulation that the trailer be removed from the property before a Building Permit is issued. Both the maker of the motion and second agreed to the stipulation.

The motion to grant with the above stipulation passed unanimously with a 7 – 0 vote.

Let the record reflect that Mr. Jousse stepped down from the following Public Hearing.

11) Petition of Leo T. McCallum, owner, for property located at 130 Street wherein a Variance from Article III, Section 10-302(A) and Section 10-301(A)(3&4) are requested to allow lot 17 to be recognized as a separate buildable lot having 90' of frontage where 100' is the minimum required. Said property is shown on Assessor Plan 140 as Lots 17 & 18 and lies within the General Residence A district.

SPEAKING IN FAVOR OF THE PETITION

Attorney McEachern, representing the owner of the property, stated this property was originally used as a grocery store and added the property came under the same ownership in 1967. To grant this request would be within the public interest because it would create another buildable house lot. However, there is a hardship because there is only 90' of street frontage. It would be within the spirit and intent of the Ordinance to grant and would strengthen the neighborhood by having another family in the neighborhood and substantial justice would be done to allow an 8,300 s.f. lot. The neighbors are generally in favor of the application and a new home would add to the streetscape. He asked that the application be granted.

Vice-Chairman LeBlanc stated there is a right-of-way on the side of the property line. Mr. McCallum replied that was correct and is located on the left side and it has always been there.

Ms. Tylene Jousse, an abutter at 197 Dennett Street, stated that ten abutters have met with the builder and they are all in favor of the application.

Attorney McEachern stated there are two common driveways that are shared with 130 Dennett Street and rather than create another curb cut, the driveways would be shared between the lots. The trees will not be clear cut on the back of the property and since the property is located in the Historic District, approval will have to be received from them also. We will build a dwelling that would be within keeping with that area that will have a 15' setback.

Mr. Rogers asked if the application will come before Traffic and Safety for the curb cut/ Ms. Tillman, a Planner, stated the applicant would have to apply for a permit from Public Works.

There being no further speakers, the Public Hearing was closed.

DECISION OF THE BOARD

Mr. Rogers made a motion to grant the application as presented and advertised with the following stipulations:

- ?? That a plan be drawn of the property marking the trees and that will remain on the lot and presented to the Planning Department; and,
- ?? That there be one common driveway shared with Lot 018.

Mr. Marchewka seconded. Mr. Rogers stated this is a nice piece of property and was at one time two separate lots. There is a hardship issue in that the lots should be separated. Mr. Marchewka stated he agreed and added the lot is only 10' short of what is required by the Ordinance and is inkeeping with other lots in the neighborhood; therefore, this request can be granted.

The motion to grant passed unanimously with a 6 – 0 vote.

12) Petition of Robert and Willow Maranhas, owners, for property located at 39 Mount Vernon Street wherein a Variance from Article III, Section 10-302(A) is requested to allow a 16'6" x 24'6" two story addition to be built in the same location as an existing barn with: a) a 0' rear yard where 25' is the minimum required, b) a 0' left side yard where 10' is the minimum

required; and, c) 47.6% building coverage where 30% is the maximum allowed. Said property is shown on Assessor Plan 111 as Lot 32 and lies within the General Residence B and Historic A districts.

SPEAKING IN FAVOR OF THE PETITION

Mr. Maranhas, the owner of the property, stated he would like to construct a small two story addition in the same location as the existing barn and will be rebuilt on the same footprint as the existing footprint to allow for additional living space in the living room and bedroom. We are also proposing to build a foundation since there is none where the barn is located. The lot is extremely small and we ask that the request be granted.

There being no further speakers, the Public Hearing was closed.

DECISION OF THE BOARD

Mr. Rogers made a motion to grant as presented and advertised; Mr. Holloway seconded. Mr. Rogers stated this application is pretty straight forward, to rebuild the home with a new foundation. There are no big problems, just improving the building. Mr. Holloway agreed and had nothing further to add.

Chairman Blalock stated he agreed and added that not much will be changed after putting in a new foundation except that the owner will have additional living space and will be more comfortable.

The motion to grant passed unanimously with a 7 – 0 vote.

At this time, the Board discussed flashing/scrolling signs.

The Board reviewed the letter received from Roger Clum in the Inspection Department concerning flashing/scrolling signs.

Mr. Rogers stated he feels that a sign that changes every 15 seconds is a flashing sign and could very easily cause a safety issue.

Mr. Horrigan stated he feels that a 15 second change is preposterous.

Mr. Holloway stated he agreed and added that the Board should bar any flashing or moving signs. The Zoning Ordinance is very clear and it should be enforced to not allow these type signs.

Chairman Blalock stated he agreed and he looked at the signs in question and feels they are very distracting for motorists.

Mr. Rogers stated that because of new technology, flashing or scrolling signs do change frequently.

Ms. Tillman stated that she would prepare a memo and present it at the December meeting.

Chairman Blalock stated he would appreciate receiving something from Traffic and Safety or John Burke, the Traffic Consultant on this matter.

Mr. Marchewka stated he feels that a 15 second time change is not acceptable and would like to receive some input from Traffic and Safety.

Mr. Rogers stated he will propose a worksession before the December meeting at 6:15 p.m.. We can then make a determination on whether we want a public hearing. All the Board members agreed.

IV. ADJOURNMENT

There being no further business to come before the Board, the Board acted unanimously to adjourn the meeting and to meet at the reconvened meeting on November 27, 2001 in the City Council Chambers at 7:00 p.m..

Respectfully submitted,

Joan M. Long
Secretary

/jml