

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

7:00 P.M.

**April 16, 2002
Reconvened on
April 23, 2002**

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

MEMBERS EXCUSED:

ALSO PRESENT: Lucy Tillman, Planner I

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I. PUBLIC HEARINGS

II.

8) Petition of Christopher and Kathleen Salavadore, owners, for property located at 87 Leavitt Avenue wherein a Variance from Article III, Section 10-302(A) is requested to allow a 24' x 26' one story garage with a 3' left side yard and a 4' rear yard where 10' is the minimum required in both instances. Said property is shown on Assessor Plan 232 as Lot 84 and lies within the Single Residence B district.

SPEAKING IN FAVOR OF THE PETITION

Mr. Christopher Salavadore, an owner of the property, stated he is requesting a Variance to construct a new 24' x 26' one story garage with storage above. The existing garage dates back to the 50's and is not repairable. The proposed garage will be slightly larger and will sit on the same footprint but it will have a more conforming setbacks being 3' from the left side yard and 4' from the rear yard where the current setback is 1 – 2 feet from the property line and is elevated. The driveway is comprised of crushed stone. Mr. Salavadore stated that the previous owners were avid gardeners and planted many beautiful flowerbeds and we did not want to disturb them.

Mr. Salavadore stated he has spoken with his surrounding neighbors and presented a letter signed by his abutters indicating they were in support of the application.

Vice-Chairman LeBlanc stated the reason you are not moving the garage is because you intend to keep the open space. Mr. Salavadore replied that was correct.

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

DECISION OF THE BOARD

Mr. Rogers made a motion to grant the request as presented and advertised; Mr. Jousse seconded. Mr. Rogers stated that this Variance will be more complimentary to the property as well as to surrounding properties. The neighborhood will not see a difference between this garage and the old garage and added it would be a shame to tear up the existing flowerbeds in

the yard. Mr. Jousse stated he agreed and added the existing garage will be replaced by another garage that is less nonconforming.

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



9) Petition of J. Tyler Rohrer, owner, for property located at 46-48 Columbia Street wherein the following are requested: 1) a Variance from Article IV, Section 10-401(A)(2)(b)and (c) to allow a nonconforming building to be reconstructed and enlarged after a fire with a 2.5' right side yard where 10' is the minimum required and a pitched roof creating additional living space where a flat roof previously existed; and, 2) a Special Exception as allowed in Article II, Section 10-206(6) to allow six dwelling units. Said property is shown on Assessor Plan 156 as Lot 16 and lies within the Apartment district. Case # 34-02

At the request of the applicant, this application was withdrawn.



10) Petition of Joan M. Mooney, owner, and Margaret Newville applicant, for property located at 104 Gates Street wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) are requested to allow a 6'3" x 14'3" two story addition to the left side of the existing dwelling with: a) an 8' left side yard where 10' is the minimum required, and b) 43% building coverage where 30% is the maximum allowed. Said property is shown on Assessor Plan 103 as Lot 72 and lies within the General Residence B and Historic A districts.

SPEAKING IN FAVOR OF THE PETITION

Mr. William Dogan, the architect for the project, stated the building is an existing colonial home with the rear corner chopped out. He added that he is proposing to fill in the rear corner that will allow for the expansion of the kitchen on the first floor and a master bathroom on the second level. Mr. Dogan believes all the criteria has been met to grant the application under the Ordinance. Denial of the Variance would result in an unnecessary hardship to the owner and the applicant because the structure would not be able to be enhanced. There will be no diminution to surrounding property values and will enhance the property values in the area. Mr. Dogan stated that substantial justice will be done and the spirit and intent of the Ordinance will not be violated. He asked that the Board look favorably upon the request.

Vice-Chairman LeBlanc asked about the property that is 8' from the property line? Mr. Dogan replied it is 9' at the rear left corner and will be reduced to 8' where the addition for the kitchen will be. There is just one bathroom in the house and this addition will allow for a second bathroom.

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

DECISION OF THE BOARD

Vice-Chairman LeBlanc made a motion to grant as advertised and presented; Mr. Rogers seconded. Vice-Chairman LeBlanc stated the uniqueness of hardship is present in this lot. The structures in this area of town were built long before the Zoning Ordinance was ever thought of. The new construction will be in the rear and will not be visible from the street. For these reasons the petition can be granted. Mr. Rogers stated he agreed and added that the addition

will have a minimal impact on the neighborhood and make the house look a little more appropriate without have that notch. The house does sit cockeyed on the lot creating a hardship.

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

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Let the record reflect that Vice-Chairman LeBlanc stepped down from the following application and alternate, David Witham sat in.

11) Petition of Susan Turner, owner, for property located at 111 Wibird Street wherein Variances from Article III, Section 10-302(A), Article II, Section 10-206(4), and Article IV, Section 10-401(A)(2)(c) are requested to allow a 21' x 28' one story addition to the rear of a single family dwelling with: a) a 7' left side yard where 10' is the minimum required; and, b) a second dwelling unit on an 8,748 sf lot where 15,000 sf of lot area would be required for two dwelling units. Said property is shown on Assessor Plan 134 as Lot 46 and lies within the General Residence A district.

SPEAKING IN FAVOR OF THE PETITION

Mr. John Widyn, the contractor for the project, stated the 7' setback on the left side is actually following the line of the existing building. He added that he was not sure where the property line is located, however, the addition could be moved to comply with the 10' setback. The driveway is located on the other side of the building and there is no problem with this side. The house is now a single-family house, the owner is asking to convert the second floor into an apartment, using the first floor as her home and rent out the second floor.

Mr. Witham asked how the backyard was currently used? Mr. Widyn replied the backyard is an open area with some trees.

Chairman Blalock asked Mr. Widyn if his statement was correct that it would not be a problem to move the addition to meet the 10' setback requirement. Mr. Widyn replied that they could move the addition; however, the setback is following the existing structure setback.

Chairman Blalock asked if the request for the Variance for the second dwelling unit would be addressed? Mr. Widyn replied this request is to break up the house so that it can be used and utilized by the owner in a way that the house can be managed financially by the owner.

Mr. Horrigan stated the plan shows that the driveway will go into the back yard and to the second apartment in the rear? Mr. Widyn replied that was correct. The driveway would be stonedust gravel.

FURTHER SPEAKING IN FAVOR OF THE PETITION

Ms. Susan Denenberg, a neighbor at 44 Wibird Street, stated that a few neighbors were not able to be present and presented letters indicating they were in favor of the application. She stated she has lived on Wibird Street since 1988 and after looking at the issue for the additional apartment, she went through the neighborhood to see if this would create a change. There are two businesses, a corner store, and a Doctor's office, on Wibird Street; there are 16 apartments; 3 house rentals; 4 condominiums and 14 single-family residences including two duplexes. She

added that she felt there would not be a substantial change to the neighborhood to add an additional apartment. She added that it was her understanding that the reason for the apartment is because of the tax situation in the City that has almost doubled in a very short time. Ms. Turner is trying to help defray her costs to remain in the neighborhood and feels that to add an apartment for additional income would be a big help. The extra space is needed to expand the lower level of her home so that she can live there and the upper level will be for the tenant. There will be no major changes in terms of the neighborhood since she will be looking for someone quiet to live above her dwelling unit. She added that she supports the petition for the Variance.

Mr. Horrigan asked Ms. Denenberg to repeat her numbers that defines the neighborhood: Ms. Denenberg replied she only looked at lower Wibird Street from Middle Street to Lincoln Avenue which she considers the neighborhood. The neighborhood always has a block party during the summer season for the past 10 years and this area was established as the neighborhood. There are 16 apartments, 3 rental houses; 4 condominium units, 14 single family homes that includes 2 duplexes that are owner occupied on one side.

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

DECISION OF THE BOARD

Mr. Horrigan made a motion to grant the application as advertised and presented; Mr. Rogers seconded. Mr. Horrigan stated in regards to the hardship issue, this property certainly will not change the character of the neighborhood by allowing a second dwelling unit with slightly less square footage. The issue is not really because a second dwelling unit is being requested, but whether or not we should allow a slightly smaller lot to accommodate a second dwelling unit. This lot does not seem to be unusually small or unusually large, but similar to the other lots in the neighborhood. There is no fair and substantial relationship between the Zoning Ordinance and the restriction on this particular lot. He added that he could not conceive how a second unit on a slightly smaller lot could injure the private or public rights of other people. The request is not contrary to the public interest to allow additional housing and it is consistent with the spirit of the Ordinance. Substantial justice will be done to the property to allow the Variance. The addition itself and the driveway will improve this particular property and enhance the value of surrounding properties. He added that he feels the petitioner has met the five requirements to grant the request. Mr. Rogers stated he agreed and added the Board members are in receipt of a letter received from the neighbors in the area in opposition to the request; however, these neighbors are not located on Wibird Street. The petitioner has presented letters from abutters who do live on Wibird Street which he feels makes a big difference. There are a lot of rental properties, a couple of offices, duplexes and is not outside of the scope of the area to put this addition on the house. He feels the addition is minimal and would be the fair thing to do.

Mr. Witham stated he struggled with this application and spent time on Wibird Street looking at the property and added he will not support the motion and his concerns are that this lot is not a little smaller than what is required, it is half of what is required. The backyard open space will be turned into an apartment area with quite a bit of driveway area. He feels that to turn the attractive back yard of a single family home into an apartment area and a driveway will take away from the neighborhood as well as the value of the property. This is what zoning is meant to do, to prevent things like this from happening. He realizes there are other duplexes in the area and apartments; however, these duplexes were built as duplexes originally. He reiterated he will not support the motion because he feels the letter received from the abutters in opposition made some good points.

Ms. Denenberg asked if they could address the issues raised by the letter in opposition received from abutters. Chairman Blalock stated that the Board was in the middle of a motion and the public hearing is closed. This is not the time to address those issues. Ms. Denenberg stated that it was not apparent to her that there were any letters submitted and was wondering if they could have a chance to review it. Chairman Blalock stated it is a matter of public record and the Board members do have a copy of the letter. He then presented a copy of the letter to Ms. Denenberg. Ms. Denenberg stated this letter was not shared with the petitioner. Chairman Blalock stated the vote will be taken right now. Chairman Blalock gave Ms. Denenberg a copy of the letter.

The motion to grant failed with a 3 – 4 vote with Mr. Marchewka, Mr. Holloway, Mr. Witham, and Chairman Blalock voting in the negative.

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12) Petition of Virginia Morin, owner, for property located at 375 Coolidge Street wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401()(2)(c) are requested to allow a 22' x 22' two story addition to an existing single family dwelling for a garage on the first floor and a bedroom and bathroom on the second floor with a 24½' front yard where 30' is the minimum required. Said property is shown on Assessor Plan 268 as Lot 41 and lies within the Single Residence B district.

SPEAKING IN FAVOR OF THE PETITION

Ms. Virginia Morin, the owner of the property, stated she would like to add a two-story garage addition to the front and to the right of her home with living space on the upper level for her daughter. To deny the application will create an unnecessary hardship for her. She added that her home is a small 3-bedroom ranch with very limited closet space. She added that she has reviewed her plans with her neighbors and they feel the addition will enhance her property. To grant the request will not be contrary to the spirit and intent of the Ordinance and the public interest will benefit. Substantial justice will be done because her daughter will be able to live at her home.

Mr. Holloway asked if the garage would become a rental? Mr. Morin replied that the living space will be her daughter only.

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 presented and advertised; Mr. Horrigan seconded. Vice-Chairman LeBlanc stated the only difficulty with this lot is because of the 5-1/2' setback and there is no other place for the garage on the lot. The request for relief is minimal; therefore, this can be granted. Mr. Horrigan stated minimal relief is being requested and the street is very quiet; however, he would like to add a stipulation that the dwelling remains as a single family home. Both Vice-Chairman LeBlanc and Mr. Horrigan agreed to the stipulation.

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

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13) **Petition of Mark Shavor, owner**, for property located at 99 Orchard Street wherein a Variance from Article III, Section 10-302(A) is requested to allow a 24' x 24' 2 story garage with a 2' left side yard and a 2' rear yard where 11.25' is the minimum required. Said property is shown on Assessor Plan 149 as Lot 47 and lies within the General Residence A district.

SPEAKING IN FAVOR OF THE PETITION

Mr. Mark Shavor, the owner of the property stated he wanted to tear down the existing garage and build a new two-car garage. The garage will be located 2' from the left side and 2' from the rear. The garage is located right on the property line as it exists now and he presented photographs of the existing garage.

Mr. Marchewka asked the height of the garage. Mr. Shavor replied it will be a littler higher than existing garage since it has sunk down a little.

FURTHER SPEAKING TO THE PETITION

Mr. Jeff Cooper stated he is an abutter on Park Street, and feels that the proposed garage is too high and will impact the neighborhood. There are reasons for setback requirements and why they should be enforced; and that is to preserve the quality of the neighborhood. He feels the proposed garage should be the same size as the existing garage.

Vice-Chairman LeBlanc asked how much taller the garage would be? Mr. Shavor replied 22' from grade to the peak of the roof and will have a 12-pitch roof to allow for storage. The roof pitch on the garage will match the house.

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. Marchewka seconded. Mr. Rogers stated the garage will be large; however, with the size of today's vehicles, it is needed. The height will just be a couple of feet different than what is existing. The setbacks will be greater than what is on the existing garage making the property more conforming; therefore, this application can be granted. Mr. Marchewka stated he agreed; however, he has some initial concerns on the height and the size of the garage. The garage will be a 1-1/2' taller; however, the garage could be built and be conforming by moving it over to the middle of the lot. However, this would eliminate a lot of open space in the rear and would not be good for the homeowner or the neighborhood. Keeping it towards the back corner of the lot is a better situation.

Mr. Horrigan stated he shares some of the abutters concerns and added that the garage is very deceptive when looking at it head-on, it looks small but looking at from the side, it is 20' high and seems large. The existing garage has a strange design and the new garage will look a lot better and enhance the property.

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



14) Petition of John and Stacy Scarlotto, owners, for property located at 893 Elwyn Road wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) are requested to allow an 8' x 22' two story addition to the left side of the existing dwelling with a 9' left side yard where 20' is the minimum required, a 24' x 24' garage with a second floor for additional living space with a 10.5' front yard where 30' is the minimum required, and 11.8% building coverage where 10% is the maximum allowed. Said property is shown on Assessor Plan 225 as Lot 4 and lies within the Single Residence A district.

At the request of the applicant, this application was withdrawn.

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15) Petition of Jeff W. Ott, owner, for property located at 85 Albany Street wherein a Special Exception as allowed in Article IV, Section 10-10-401(A)(1)(d) is requested to allow 4 new dwelling units in space formerly occupied by the antique shop in a building to be reconstructed after a fire in accordance with Article IV, Section 10-401(A)(2)(b) on a 11,132 sf lot. Said property is shown on Assessor Plan 146 as Lot 25 and lies within the Mixed Residential Business district.

SPEAKING IN FAVOR OF THE PETITION

Mr. Jeff Ott, the owner of the property, stated he would like to change the use of the property, by eliminating the retail use, reducing the business office use to 1,250 s.f. and construct four dwelling units. He stated the property had a significant fire and everything was destroyed. The Ordinance does allow one nonconforming use to change to another nonconforming use and the neighborhood is a mix of residential and commercial uses. The original foundation will be used and the building will have three floors. The footprint of the new structure will not be changed. The building will be identical to what was there prior to the fire. The Northeast Shade Tree business will remain and is an existing business. Therefore, the property will be a mix of residential and commercial uses.

Vice-Chairman LeBlanc asked where the parking would be provided. Mr. Ott replied there is parking on the side as you enter the property from Cass Street.

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. Marchewka seconded. Mr. Rogers stated it is obvious that all the requirements for a Special Exception have been met. The building was burned down and the proposed use will be less intense than what was existing. There will be no detriment to surrounding properties to allow the Special Exception nor will there be an excess demand on municipal facilities or storm water run off. Mr. Marchewka agreed and added it is clearly a less intense use than what was there previously and is a better use of the property.

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

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16) **Petition of Douglas W. Roberts, owner**, for property located at 247 Richards Avenue wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(b) are requested to allow a 10'3" x 11' deck with stairs with: a) a 4' right side yard where 10' is the minimum required; and, b) 43% building coverage where 25% is the maximum allowed. Said property is shown on Assessor Plan 129 as Lot 2 and lies within the General Residence A district.

SPEAKING IN FAVOR OF THE PETITION

Mr. Douglas Roberts, the owner of the property, stated he wanted to construct a small deck to the rear and right side of his property. This will allow for a door from the kitchen to the deck and will improve the aesthetics of the property. There will be no negative impacts created in the area since the deck will not be seen from the street. The deck will be close to the lot line and will fill in a notch of the building as indicated on the site plan.

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

DECISION OF THE BOARD

Mr. Horrigan made a motion to grant the application as advertised and presented; Mr. Rogers seconded. Mr. Horrigan stated the existing stairs appear as though they should be replaced and added the new deck and stairs would be safer and more attractive. The building coverage is not being increased more than 1 - 2%. The request is minimal and makes sense for a better entry to the house. Mr. Rogers agreed and had nothing further to add.

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



17) **Petition of Wren's Nest Motel Corp., owner**, for property located at 3548 Lafayette Road wherein a Variance from Article XII, Section 10-1201(A)(2) is requested to allow 20' and 22' maneuvering aisles where 24' is the minimum required for two way traffic. Said property is shown on Assessor Plan 297 as Lot 6 and lies within the Single Residence A district.

SPEAKING IN FAVOR OF THE PETITION

Mr. Gary Bowmar, the owner of the property, stated he needs relief on two sections of the driveway. He added there is an existing oak tree on the corner and unless the tree is removed, the 20' maneuvering aisle cannot be expanded. The 22' maneuvering aisle cannot be expanded because the landscaping and flowerbeds that are in place would be destroyed. Mr. Bowmar compared his maneuvering aisles with the aisles at Home Depot.

Mr. Bowmar stated that with a new restaurant going in on the property, he added that additional parking is needed. He added that he wants to make sure the traffic flows easily on the property. Mr. Bowmar feels that to expand the aisles to the required 24' will make the driveways seem like a highway. The parking spaces will be 19-20' deep and will be located 22' from the end of the vehicles.

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

DECISION OF THE BOARD

Vice-Chairman LeBlanc made a motion to grant the application as presented and advertised; Mr. Rogers seconded. Vice-Chairman LeBlanc stated we are looking for a 2' Variance on one aisle and a 4' Variance on the other aisle and cannot imagine that vehicles will be going fast in these areas as they do in the rear of Home Depot. Because this is a controlled situation, the Variance can be granted. Mr. Rogers stated he agreed and added there would be no speed involved, plus the fact that one third of the site is one-way. The 22' area is a moot point.

Mr. Horrigan stated he will support the motion; however, this site is unique in one way because of the beautiful landscaping and the setting is perfect for a motel operation. He added he would be very reluctant to insist upon a few more feet of road that would disturb the vegetation.

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



18) Petition of Two International Group, owner, for property located at 200 International Drive wherein a Variance from Section 303.04B of the Pease Development Authority Zoning Ordinance is requested to allow a 1,500 sf professional office for an engineering firm. Said property is shown on Assessor Plan 312 as Lot 3 and lies within the Industrial district.

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernard W. Pelech, representing the owner, stated the proposal was to allow 1,500 s.f. of professional office space for an engineering firm located in the rear portion of the structure. The Pease Zoning Ordinance allows business offices but not professional offices in an Industrial zone. There are many business offices located in the structure. He believes the five criteria have been met to grant the Variance whether the application is for a professional office or a business office. There will be no diminution in value to surrounding property values because the surrounding uses are offices and light industrial uses. The spirit and intent of the Pease Ordinance will not be broken because if business offices are allowed, professional business offices should also be allowed. Substantial justice will be done because a hardship will be placed on the owner and will not be outweighed by any benefit to the public. The request is within the public interest because engineering firms are now locating to Pease. There is a hardship since this is a reasonable use of the property and the Ordinance interferes because the Ordinance does allow for business offices but not professional offices. He feels that just because someone has a professional degree, they are put in a different category.

Vice-Chairman LeBlanc asked how many offices or businesses are located in this large building? Attorney Pelech replied the building is 80,000 s.f. and there are five businesses. The remainder of the space is in the process of being leased out.

Mr. Horrigan stated that recently there was an article in the Portsmouth Herald regarding office space and is concerned every time that industrial space is lost to allow business use, it is difficult to get it back and asked if the engineering firm somehow has a time frame. He added that he is reaching a point of how often he wants to grant proposals for business use and asked Attorney Pelech to respond to this statement. Attorney Pelech replied this building was built primarily for office space because business offices are allowed although there are some larger industrial spaces.

Chairman Blalock asked if in the Pease Development Authority zoning ordinance, are Professional Offices were excluded specifically or is it just not mentioned? Attorney Pelech replied that it is just not mentioned. Chairman Blalock asked that business office and professional office use be clarified. Attorney Pelech replied that is pretty tough. A professional office would be for a Doctor; Attorney or Dentist office; however, he feels the same activities go on in both types of offices. The only difference is that a professional office requires a professional degree such as Doctor, Attorney or Dentist and the parking requirement does change; however, there is plenty of available parking for both uses. Chairman Blalock stated this building was built primarily for business office as opposed to industrial use. Attorney Pelech replied that was correct and added the intent of the building originally was for a flex building. In the rear of the building, there are overhead doors to be used as warehouse space or light manufacturing.

Attorney Pelech presented a floor plan of the building to Board members to review.

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

DECISION OF THE BOARD

Vice-Chairman LeBlanc made a motion to recommend approval as presented and advertised to the Pease Development Authority; Mr. Rogers seconded. Vice-Chairman LeBlanc stated the applicant has done an excellent job in presenting the reasons why this application can be granted. Mr. Rogers stated he agreed and had nothing further to add.

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



IV. ADJOURNMENT

There being no further business to come before the Board, the Board acted unanimously to adjourn and meet at the next scheduled meeting on May 21, 2002 at 7:00 p.m. in the City Council Chambers.

Respectfully submitted,

Joan M. Long
Secretary

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