

**MINUTES OF THE BOARD OF ADJUSTMENT  
PORTSMOUTH, NEW HAMPSHIRE  
CITY COUNCIL CHAMBERS**

7:00 P.M.

June 18, 2002

**MEMBERS PRESENT:** Vice-Chairman, Charles LeBlanc, James Horrigan; Bob Marchewka; Alain Jousse, Nate Holloway

**MEMBERS EXCUSED:** Chairman Jack Blalock, Chris Rogers, and alternate, David Witham

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

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**Please Note:** Due to the length of Agenda, Public Hearings on applications #1 through #13 will be held on Tuesday, June 18, 2002 and applications #14 through #16 will be held on the following Tuesday, June 25, 2002 at 7:00 P.M. in the City Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, New Hampshire.

**I. Approval of Minutes**

The motion was made and seconded to approve the minutes from the Meeting of May 21, 2002 with the following correction:

On page 11 under the Decision of the Board, the second sentence read as follows: Mr. Horrigan stated that given the surrounding properties, there would be no fair and substantial relief to deny the application. This sentence should have read that Mr. Horrigan stated that given the surrounding properties, there would be no fair and substantial reason to deny the application. Let the record reflect this change has been made.

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At this time, Acting Chairman LeBlanc advised petitioners that there were only five voting members and that four affirmative votes were needed to grant an application. He added that applicants have the option of withdrawing their application to be heard at a later meeting to allow for a full Board to be present to act on their applications.

**II. Public Hearings**

Acting Chairman LeBlanc advised the applicants that he had conflict with the following application and will be stepping down leaving only four voting members.

At this time, Mr. Turner stated she would like to table her application to the reconvened meeting on June 25, 2002.

Mr. Horrigan made a motion to table the following application to the June 25, 2002 reconvened meeting to the end of the Agenda; Mr. Jousse seconded. The motion passed unanimously with a 5 – 0 vote.

**1) 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. Case # 36-02

Mr. Charles Hoyt, representing the owners stated the owners would like to table the following application to the next scheduled meeting on July 16, 2002. The Board voted unanimously to grant the request with a 5 – 0 vote.

**2) Petition of Victoria Smith and Robert Bowser, owners,** for property located at 692 State Street wherein the following are requested: 1) a Variance from Article II, Section 10-206 to allow a dwelling unit in an accessory structure (garage) for a total of two dwelling units on the lot, and 2) a Variance from Article III, Section 10-302(A) to allow: a) two dwelling units on a 4,644 sf lot where 7,000 sf of lot area is required, b) a 2' rear yard where 20' is the minimum required, c) a 1' left side yard where 10' is the minimum required; and, d) 43% building coverage where 35% is the maximum allowed. Said property is shown on Assessor Plan 137 as Lot 6 and lies within the Apartment district. Case # 6-1

**3) Petition of Ron and Lois Lawrence, owners Marilyn Morrissey and Steve Little, option holders,** for property located at 524 1/2 Hillman Street wherein a Special Exception as allowed in Article II, Section 10-204 is requested to allow a professional office (Audiology and Hearing Aids) in an existing 3 unit apartment building after converting 2 apartments on the first floor for the professional office. Said property is shown on Assessor Plan 156 as Lot 3 and lies within the Mixed Residential Business district. Case # 6-2

**Withdrawn**

**4) Petition of Ann E. Beattie, owner,** for property located at 2 Sagamore Grove Road wherein the following are requested for a 20' x 20' one story detached garage: 1) a Variance from Article II, Section 10-208 to allow an accessory detached garage for a single family dwelling in a district where dwellings are not allowed, and 2) a Variance from Article IV, Section 10-402(B) and Article III, Section 10-304(A) to allow a 10' front yard where 30' is the minimum required. Said property is shown on Assessor Plan 201 as Lot 3 and lies within the Waterfront Business district. Case # 6-3

**SPEAKING IN FAVOR OF THE APPLICATION**

Ms. Beattie stated this application was granted in 1998; however, the previous owner sold the property and the project was never completed.

Mr. Keith Sheehan, the contractor for the project, stated the Assistant Building Inspector has examined the property and recommended that for safety purposes, the garage be demolished. He added that he has pulled a demo permit and it will be moved back 10' off the street. The existing garage is a 24' x 24' two story and we are proposing a 20' x 20' one story.

Acting Chairman LeBlanc stated that the plan shows there is another door from the garage. Ms. Beattie replied that there is a door in the rear to move garden equipment to the outside.

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. Marchewka seconded. Mr. Horrigan stated this is a similar application from what was presented previously. The proposed garage will be a great improvement over what is existing even if the garage is moved back 30', the garage would be in the wetlands buffer zone. To deny the application would be unreasonable. Mr. Marchewka stated he agreed and added the request is reasonable and should be granted.

The motion to grant passed unanimously with 5 – 0 vote.



**5) Petition of Virginia Ross and Gael Boyd, owners,** for property located at 328 Aldrich Road wherein a Variance from Article III, Section 10-302(A) is requested to allow a 16' x 25' one story addition to the rear of an existing building replacing an existing deck and 4' x 24' egress stairs to the right side of the building creating 22.3% building coverage where 20% is the maximum allowed. Said property is shown on Assessor Plan 166 as Lot 49 and lies within the Single Residence B district. Case # 6-4

**SPEAKING IN FAVOR OF THE APPLICATION**

Ms. Ross and Ms. Boyd, the owners of the property, stated that currently there is a 14' x 16' deck that we are proposing to replace with a 16' x 20' deck and a 16' x 25' one story addition to rear of the building. We are also proposing to add a 4' x 24' staircase to the right of the building that will create a 2.3% increase in lot coverage. The addition, the deck, and the stairway will be approximately 500 s.f. in area.

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. Marchewka seconded. Mr. Horrigan stated the existing stairway needs to be replaced and the owners are planning to coordinate the addition with the existing house. To grant the application would be within the public interest since the stairs will be safer than the existing conditions. The increase in lot coverage is minimal and is caused by the stairway. Mr. Marchewka stated that the property values will be increased as well as the surrounding property values.

The motion to grant passed unanimously with a 5 – 0 vote.



**6) Petition of Michael and Ann C. Bliss, owners,** for property located at 48 Thornton Street wherein a Variance from Article III, Section 10-302(A) is requested to allow a 4' x 6' one story addition to the right side and an 8' x 8' two story addition to the front of the existing dwelling creating 27% building coverage where 25% is the maximum allowed. Said property is shown on Assessor Plan 143 as Lot 24 and lies within the General Residence A district. Case # 6-5

**SPEAKING IN FAVOR OF THE APPLICATION**

Mr. Michael Bliss, the owner of the property, stated they were requested to add a first floor addition consisting of 88 s.f. for an open porch in the front and an addition to the rear for additional closet space and a pantry. The lot is very small; therefore, the required lot coverage is being expanded

on. The existing front stairs will be removed and new stairs will be constructed next to the existing stairs.

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. Jousse seconded. Mr. Horrigan stated this house is located close to the street and to the side yards. Any kind of addition to the house would require relief from this Board. This property has a beautiful garden and feels the changes will enhance the property as well as the surrounding properties. The renovation is reasonable for this home. Mr. Jousse agreed and added the lot coverage is an increase of only 2% and is minimal; therefore, the request should be granted.

The motion to grant passed unanimously with a 5 – 0 vote.



**7) Petition of Dennis M. and Sandra Bridgeman, owners,** for property located at 1360-1362 Islington Street wherein a Variance from Article III, Section 10-302(A), and Article IV, Section 10-401(A)(2)(c) is requested to allow an 8' x 45' deck to the rear of and existing two family dwelling creating 27.6% building coverage where 20% is the maximum allowed. Said property is shown on Assessor Plan 233 as Lot 99 and lies within the Single Residence B district. Case # 6-6

**SPEAKING IN FAVOR OF THE APPLICATION**

Bernard W. Pelech, representing the owners, stated this particular application includes a request for lot coverage. The existing lot coverage is 23% and it is now being exceeded by 4.6% increasing the coverage to 27.6%. The existing 6' x 45' deck has rotted and is beyond repair and the owners are proposing an 8' x 45' deck. The neighbors have been very supportive of the application since there will be no diminution to surrounding property values and have indicated that the property will be aesthetically pleasing. The public or private rights of other will not be violated to grant this application and substantial justice will be done because the hardship to the owners will not be outweighed. Attorney Pelech also stated that there will be no benefit to the public to deny the request nor will the request be contrary to the spirit and intent of the Ordinance. He believes all the criteria has been met to grant the request and asked the Board to look favorably on the request.

Attorney Pelech presented two letters from abutters in favor of the petition to the Board members to review.

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

**DECISION OF THE BOARD**

Mr. Marchewka made a motion to grant the application as presented and advertised; Mr. Jousse seconded. Mr. Marchewka stated that when he first looked at the proposal, he felt the request was more than it actually is. The new deck is 2' wider and is being placed on a large building on a very small lot. There is a slope to the land in the rear making the back yard unusable. There has been a lot of work done to property and feels this application should be granted. Mr. Jousse stated the deck will be increased by 2' and that the request is minimal. The hardship in this case is because of the size of the lot; therefore, this request should be granted.

The motion to grant passed unanimously with a 5 – 0 vote.

**8) Petition of William K. and Amy M. Gum Jr., owners,** for property located at 71 Taft Road wherein a Variance from Article III, Section 10-302(A) is requested to allow a 14' x 26' deck with a 26' rear yard where 30' is the minimum required. Said property is shown on Assessor Plan 247 as Lot 82 and lies within the Single Residence B district. Case # 6-7

Ms. Tillman, a Planner I from the Planning Department, stated the application indicated there would be a 14' x 26' deck; however, she wanted to go on record to indicate it is not a deck that is being requested, but a 14' x 26' addition to the rear of the home. The Board can move forward and act on the application because the size will remain the same.

**SPEAKING IN FAVOR OF THE APPLICATION**

Mrs. Amy Gum, an owner of the property, stated they were proposing to building a 14' x 26' addition to rear of the home that will allow for a ¾ bath with a washer/dryer. The remaining area will be used for a family room; however, this will create a 26' rear yard setback where 30' is required. She stated that the home was built back in the 70's. The backyard has many trees and it is overgrown. We are planning to remove 10-15 trees to allow for the addition.

Mr. Marchewka asked what was located to the rear of the lot? Mr. Gum replied State Conservation Land.

**FURTHER SPEAKING IN FAVOR OF THE APPLICATION**

Mr. Tom Ferrini, a direct abutter at 69 Taft Road, stated that all the criteria has been met to grant this request. To allow the request will not be contrary to the spirit and intent of the Ordinance and will benefit the public interest. Substantial justice will be done and will be completely in character with the neighborhood.

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

**DECISION OF THE BOARD**

Mr. Marchewka made a motion to grant as presented and advertised; Mr. Jousse seconded. Mr. Marchewka stated he feels this is a rather minimal request. The lots are old and small and they are not deep and are typical of the neighborhood. There will be no diminution to property values to allow the request and the addition will enhance property values for the owner as well as to the surrounding properties; therefore, this application can be granted. Mr. Jousse stated he agreed and had nothing further to add.

The motion to grant passed unanimously with a 5 – 0 vote.

**9) Petition of Stanley and Donna Nice, owners,** for property located at 14 Suzanne Drive wherein a Variance from Article III, Section 10-302(A) is requested to allow a 5' x 14' front porch creating 20.7% building coverage where 20% is the maximum allowed. Said property is shown on Assessor Plan 292 as Lot 88 and lies within the Single Residence B district. Case # 6-9

**SPEAKING IN FAVOR OF THE APPLICATION**

The contractor, representing the owners, stated this particular area has many small lots. The request is to allow a 5' x 14' front porch; however, this creates an increase in the building coverage of .7% which he feels is very minimal. The front porch could be built 18" from the ground eliminating the need for a Variance; however, because of the shape of the lot, this cannot be done.

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. Marchewka seconded. Mr. Horrigan stated he feels that the request is for minimal relief and will be an improvement to the front porch making it safer as well as improve the appearance of the house. The renovation will be aesthetically pleasing and add to the property values as well as to the surrounding properties. Mr. Marchewka stated he agreed and added that this is a minimal request being only an increase of .7% in the building coverage. The Variance would not be needed if it were at ground level; however, since it is more than 18" from the ground, a Variance is required.

The motion to grant passed unanimously with a 5 – 0 vote.



**10) Petition of 55 Congress Street Condo Association, owner, AT&T Wireless Services Inc., 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 for a total of five cabinets. Said property is shown on Assessor Plan 117 as Lot 9 and lies within the Central Business B and Historic A districts. Case # 6-10

**SPEAKING IN FAVOR OF THE APPLICATION**

Mr. Taylor Whiteside, of AT&T Wireless Services, stated they were proposing to add one more 3' x 4' x 5' cabinet to the roof of this building. He added that all the requirements have been met to grant a Special Exception because a service is being provided to the area. To add the cabinet does not pose any hazard or detriment to surrounding property values. The cabinets are not visible from the ground and there will be no traffic hazard or any storm water runoff created.

Mr. Horrigan asked if any emissions would be given off from the cabinets? Mr. Joel Rovitz, the Engineer from AT&T Wireless replied there would be none since they meet the FCC Standards. Mr. Horrigan asked if there would be any new antennae added? Mr. Rovitz replied there would not be.

Vice-Chairman LeBlanc stated the Legal Notice indicates there will be a total of five cabinets. Mr. Rovitz replied that this is in error and there will be a total of four cabinets.

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

**DECISION OF THE BOARD**

Mr. Marchewka made a motion to grant the application as presented and advertised; Mr. Jousse seconded. Mr. Marchewka stated this site has received approval in the past for similar cabinets and is a site that the Board has deemed appropriate for this use. The additional cabinet will not make a difference and meets all the requirements to grant a Special Exception. Mr. Jousse stated

he agreed and added that it is very similar to what was granted in November of 2001. The question is whether it will be a contribution; however, the request should be granted.

Mr. Horrigan stated the previous approval for a cabinet is out of sight and feels confident voting to grant the Special Exception for an additional cabinet bringing the total cabinets up to four.

The motion to grant passed unanimously with a 5 – 0 vote.

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**11) Petition of Richard C. S. and Linda H. Harding Jr., owners,** for property located at 1808 Islington Street wherein a Variance from Article II, Section 10-206 is requested to allow a second dwelling unit in the barn attached to the single family dwelling in a district that only allows one dwelling unit on a lot. Said property is shown on Assessor Plan 241 as Lot 15 and lies within the Single Residence B district. Case # 6-12

**SPEAKING IN FAVOR OF THE APPLICATION**

Ms. Linda Harding, an owner of the property, stated they had purchased the property three years ago from the Doyle family. It is a long rambling house with an attached barn and has a small loop out back. Ms. Harding stated they have a new tenant who uses the barn for woodworking and has decided he would like to put in an apartment and live at the same location. This would not be the only two family home in the neighborhood; therefore, it would not impact the neighborhood nor will it cause a traffic safety hazard. There will be no additional demand on the City services and the property will be maintained.

Mr. Marchewka stated if this request is granted, will the property have two dwelling units. Ms. Harding stated that from the outside, the house will be exactly the same as it does now. Mr. Marchewka asked that if in the future, could the owner of the property rent out the dwelling to one person and the business to another person and was there anyway a stipulation could be made on the motion to reflect this. Ms. Tillman, Planner 1 replied “no, that there was no way”.

Mr. Gregory Hopkins, the applicant stated that the barn is ideal for woodworking; however, he would like to live at the location as well.

Mr. Horrigan asked if this request should have come under the classification of a home occupation? Ms. Tillman replied that the applicant will not live in the single family home, but in the barn.

Mr. Horrigan made a motion to table the application to the next scheduled meeting on July 16, 2002 to allow for a complete set of detailed specifications, dimensions and drawings to be submitted; Mr. Jousse seconded.

The motion to table to the July 16, 2002 meeting passed with a 4 – 1 vote with Mr. Holloway voting in the negative.

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**12) Petition of Kathryn R. Lynch and Robert J. Andelman, owners,** for property located at 3 Boyan Place wherein the following are requested: 1) an Equitable Waiver as allowed in NH RSA 64:33-a (Equitable Waiver of Dimensional Requirement) to allow a 13’3” front yard where 30’ is the minimum required, and 2) a Variance from Article III, Section 10-302(A) to allow a 9’ x 39’ first floor addition onto the right side of an existing dwelling 21 ½’ at the closest point and a

second floor addition (1,064 sf) over the existing garage, screened porch, and new addition with a one foot front overhang with a 12'3" front yard at the closest point where 30' is the minimum required. Said property is shown on Assessor Plan 207 as Lot 30 and lies within the Single Residence B district. Case # 6-13

### **SPEAKING IN FAVOR OF THE APPLICATION**

Mr. Andelman, the owner of the property, presented photographs of the property to the Board for review. He stated he would like to build an addition to his home; however, an Equitable Waiver is needed because the front yard does not meet the required setbacks. We did not realize this until a plot plan was completed to prepare for the addition and this error was discovered. Mr. Andelman stated that apparently the City had no knowledge of this front setback when the original Building Permit had been issued.

Mr. Andelman stated the second request is to allow a 9' x 39' first floor addition and a second floor addition over the existing garage, a screened porch and also a new addition with a one foot front overhang. The property is located on a cul-de-sac. We are planning to construct a third car garage since his parents are planning on relocating to this area. He added that last month they were here to request a third car garage; however, it was denied

Mr. Andelman stated this garage will affect the front backs and the equitable waiver. This addition does not affect the City or the surrounding neighborhoods because he feels property values will be increased and will improve the aesthetics of his home. This application does not interfere with reasonable use of the property and will increase property values. The application will not injure the public or the neighbors. Have spoken to our abutters and they do not have any objection to our request.

Mr. Marchewka stated if we grant the Equitable Waiver, do we need to grant the Variance? Ms. Tillman replied "yes"

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

Acting Chairman LeBlanc read a letter from Mrs. Sullivan, the adjacent abutter, into the record that she was in opposition to the request because it will devalue her property values and encroach on her privacy. The letter went on to state that if was ever a fire at this structure or her home that both houses would burn.

Mr. Sullivan, Mrs. Sullivan's son, stated that if this request is granted, the Andelman's will be able to look directly into her home.

The contractor for the project stated nothing will be built in front of Mrs. Sullivan's window.

Acting Chairman LeBlanc asked how high the garage would be? The Contractor replied 18-1/2'

Mr. Andelman stated he has taken great pains to not encroach on anyone's property and have rejected the issue of fire as indicated in Mrs. Sullivan's letter.

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



**DECISION OF THE BOARD**

Mr. Horrigan made a motion to grant the Equitable Waiver; Mr. Jousse seconded. There will be no diminution to surrounding property values and the cost of correcting the mistake outweighs any benefit to the public. To move the house would be incredibly expensive and feels this request can be granted. Mr. Jousse stated he agreed and added it would be very expensive to move the house or move the road.

The motion to grant the equitable waiver passed with a 5 – 0 vote.

Mr. Marchewka made a motion to grant the Variance request as presented and advertised; Mr. Jousse seconded. Mr. Marchewka stated this application was denied last month because of the side yard Variance; however, this has been corrected and the applicant has changed his plans to be in conformance with the zoning regulations. The only issue before us is for the front yard setback. This request is minimal given that the side yard has been reduced to 10'; therefore, there will be no diminution to surrounding property values and is within the public interest. He added that he feels the hardship in this case is because there is a carving taken out of the front yard because of the cul-de-sac. The request is minimal and can be granted. Mr. Jousse stated he agreed that he felt the hardship is because of the placement of the house on the lot and the garage will be 13.3" from the edge of the road. The location of house on the lot is no fault of the applicant; therefore, because of the location of house the Equitable Waiver can be granted as well as the Variance can be granted.

Acting Chairman LeBlanc stated the overhang that impinges over the ground. The request is minimal. This house is located on a cul-de-sac; therefore, you will not have any additional traffic.

The motion to grant passed unanimously with a 5 – 0 vote.



**13) Petition of Leonard and Ann Kovit and Mary Yager Estate, owners, Bluestone Properties, Inc., applicant,** for property located at 2236 Lafayette Road wherein the following are requested: 1) a Variance from Article III, Section 10-301(A)(8) to allow a 60' front yard where 105' is the minimum required, 2) a Variance from Article III, Section 10-304(A) to allow a 13' rear yard where 50' is the minimum required, 3) a Variance from Article XII, Section 10-1201(A)(3)(E) to allow parking and maneuvering isles be located within 40' of the front property line where a 40' setback with landscaping is required; and, 4) a Variance from Article XII, Section 10-1203(A)(1) to allow a loading zone to be within 25' of the rear property line where 50' is the minimum required. Said property is shown on Assessor Plan 267 as Lot 2 and lies within the General Business district. Case # 6-14

**SPEAKING IN FAVOR OF THE APPLICATION**

Attorney Peter Loughlin, representing the owners and the applicant, stating nothing can be done on this lot without receiving a Variance. He presenting a letter from the DOT to relocate the driveway as well as an 1989 DOT study on the Route 1 Corridor. This particular lot is long and narrow and has been in existence since the 1930's. He added that sometime in the 1960's, the City adopted the 105' setback requirement from Lafayette Road. He stated his client is proposing a 4,800 s.f. building that will contain a restaurant and retail space. All the conditions have been met to grant the application adding that it is a minimal amount of relief being requested and added the use is permitted.

Mr. Horrigan stated the third Variance request is asking for relief to have landscaping and the plan does not show landscaping. Attorney Loughlin replied that there will be landscaping to the front of the property.

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

**DECISION OF THE BOARD**

Mr. Marchewka made a motion to grant the application as presented and advertised with the representation made that there will be landscaping in front of the property; Mr. Holloway seconded. Mr. Marchewka stated there is a hardship with the lot being so narrow. Reasonable use is being requested to use the property. Mr. Marchewka added that given the fact that the adjacent Meinikie lot is very similar to this application, he feels this request can be granted. Mr. Holloway stated he agreed and asked about the landscaping on the front. Ms. Tillman replied that this application will be reviewed by the Planning Board to ensure the landscaping will have safe for line of sight.

The motion to grant passed unanimously with a 5 – 0 vote.



**III. Adjournment**

There being no further business to come before the Board, the Board acted unanimously to adjourn and meet at the reconvened meeting on the following Tuesday, June 25, 2002 at 7:00 p.m. in the City Council Chambers.

Respectfully submitted,

Joan M. Long  
Secretary

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