

**MINUTES OF THE AUGUST 20, 2002 BOARD OF ADJUSTMENT MEETING  
PORTSMOUTH, NEW HAMPSHIRE**

**7:00 P.M**

**CITY COUNCIL CHAMBERS**

**AUGUST 20, 2002**

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

**MEMBERS EXCUSED:** Bob Marchewka

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

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**I. Old Business**

**A) Petition of Portsmouth Associates, LLC, owner,** for property located at 1465 Woodbury Avenue wherein a Variance from Article III, Section 10-304(A) is requested for the relocation of the brick school house building to the right side of the lot with a 32' front yard where 70' is the minimum required. Said property is shown on Assessor Plan 216 as Lot 3 and lies within the General Business district. Case # 6-15 This application was tabled at the July 16, 2002 meeting to the August 20, 2002 meeting

Ms. Tillman, Planner I, explained to the Board members, that a letter had been received indicating the property had been sold and that the new owners wanted to table the request indefinitely to allow time to discuss with tenants the proposal. The new owners also requested that they be allowed a public hearing after this has been completed.

Vice-Chairman LeBlanc made a motion to table the application indefinitely; Mr. Rogers seconded and the motion passed unanimously with a 7 – 0 vote.

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**II. Public Hearings**

**1) Petition of George Hurtt, owner,** for property located at 32 Manning Street wherein a Variance from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) are requested to allow a 4' x 10' deck with: a) a 6' left side yard where 10' is the minimum required, b) a 23' rear yard where 25' is the minimum required; and, c) 39.5% building coverage where 30% is the maximum allowed. Said property is shown on Assessor Plan 103 as Lot 68 and lies within the General Residence B and Historic A districts. Case # 8-1

**SPEAKING IN FAVOR OF THE PETITION**

Mr. George Hurtt, the owner of the property, stated he purchased the property two months ago and that he was requesting to replace the existing deck that has deteriorated and in need of repair with a new and smaller deck than what is existing. The smaller deck will

provide access to the basement. All the safety code issues have been met. The proposal was approved by the Historic District Commission in 1998; however, it was never completed. Mr. Hurtt presented photographs of the existing façade as well as the proposed façade to the Board members to review.

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

### **DECISION OF THE BOARD**

Mr. Rogers made a motion to grant the petition as presented and advertised; Mr. Jousse seconded. Mr. Rogers stated this is a simple request since the owner is requesting that the existing nonconforming deck be made smaller. Mr. Jousse agreed and added any time a nonconforming structure is being reduced in size, we should “grab it”. He added that the deck is small and the application should be approved.

Mr. Horrigan stated the lot is small and any kind of renovation would require relief from this Board.

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



**2) Petition of The Flatley Company, owner, Powerspan Corporation, applicant,** for property located at 500 Spaulding Turnpike wherein Special Exceptions as allowed in Article II, Section 10-209(3)&(10) are requested to allow a research, biological and chemical laboratory including development and testing, prototype production facilities and related assembly of high technological equipment and components in a 46,877 s.f. space within the existing building. Said property is shown on Assessor Plan 238 as Lot 20 and lies within the Office Research district. Case # 8-2

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

Attorney Bernard Pelech, representing Powerspan, stated the company is expanding their New Durham facility to the Portsmouth area where they plan to occupy 46,877 s.f. of space in the eastern wing of the structure. The company designs high technology electric catalytic oxidation systems for the electric generation industry. This space would allow a research laboratory for development, testing, and assembly of technological type equipment and components and added there will be no biological component to the business.

Attorney Pelech stated a Special Exception is required for the use to take place in the Office/Research district. He stated there will be no hazard to the public or adjacent properties because of creation of a potential fire, explosion or release of toxic materials. The Building Inspector reviewed a list of all the chemicals and materials that will be utilized by Powerspan and he as determined that the use is not a “high hazard use”. All materials stored at the site will be in compliance with Federal, State and Local Codes. Attorney Pelech stated there will be no detriment to property values in the vicinity or change in the general characteristics of the area. The use will occur in the existing

structure and will utilize the existing parking area, accessways, and will not deter from property values. There will be no exterior changes to the structure.

Attorney Pelech stated there will no creation of a traffic safety hazard or substantial increase in the level of traffic congestion since the company will employ fewer employees than the previous tenant; therefore, there will be no creation of a traffic safety hazard or added congestion. There will no demand on municipal services nor will there be any impact on the school system.

Attorney Pelech stated there will be no increase in storm water run-off onto adjacent properties. He asked that the Board look favorably upon the application.

Mr. Holloway asked if there would be any toxic waste created? Chris Maguire from Powerspan stated there would be; however, it is a low level waste and will be stored on the property for no more than 30 days.

Mr. Horrigan asked if the applicant would be using the whole building and if there would be any noise issues? Mr. Maguire replied that they would be sharing the space with another tenant and added that there would not be any noise problems created.

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. Rogers seconded. Vice-Chairman LeBlanc stated that he feels all the six required criteria have been met by this facility; therefore, we are bound to grant the request. Mr. Rogers stated he agreed and added there is no reason not to grant the application since all the standards have been met to grant the Special Exception.

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



**3) Petition of Ralph G. and Cheri J. Dennett, owners,** for property located at 51 Richards Avenue wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) are requested to allow: a) a 13' x 22' two story addition to the right rear of the existing building with a 6' right side yard where 10' is the minimum required, b) the existing 10' x 19' deck to be moved to 6' from the right side yard where 10' is the minimum required; and, c) a 13'6" x 17' two story addition to the left rear of the existing single family dwelling with all additions creating 36.1% building coverage where 25% is the maximum allowed. Said property is shown on Assessor Plan 128 as Lot 4 and lies within the General Residence A district. Case # 8-3

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

Mr. William Dogan, the architect for the project, stated he feels the application is self-explanatory. The dwelling is a two story basic colonial with a free standing carriage

house. The lot coverage will be increased to a little over 1%. The existing deck will slide over to the right and will not encroach any further on the existing setbacks.

Mr. Dogan stated that all the criteria has been met and the safety requirements have been addressed. There will be no diminution to surrounding property values and will not be contrary to the spirit and intent of the Ordinance. The addition will enhance the general welfare of the area and will benefit the public interest. He asked that the Board look favorably on the project.

Chairman Blalock then read a letter received from Mr. Thomas Morgan, a direct abutter at 39 Richards Avenue into the record that stated they had no objections to the proposal.

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 he feels the request would make the building more conforming and more livable. There have been no abutters to speak in opposition. Moving the deck will decrease the space between the garage and the house. Vice-Chairman LeBlanc stated that to increase the lot coverage by 1% is minimal and to move the deck to the right and be the same size as existing; there this a grantable request.

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

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**4) Petition of GPP Properties 1995-1 LLC, owner,** for property located at 100 Coakley Road wherein the following are requested to allow a 50' x 80' (4,000 s.f.) one story addition to an existing building: 1) a Variance from Article II, Section 10-208 and Article IV, Section 10-401(A) to allow a nonconforming wholesale business and associated warehousing to expand in a district where such use is not allowed, and, 2) a Variance from Article III, Section 10-304(A) to allow said addition with a 22' rear yard where 50' is the minimum required . Said property is shown on Assessor Plan 234 as Lot 6 and lies within the General Business district. Case # 8-4

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

Attorney Bernard Pelech, representing the owner, stated there was a similar application before the Board in 2000 that was denied because of lack of hardship. At that time, an 4,800 s.f. addition was requested and this request is for a smaller 4,000 s.f. addition that will not be within the 100 setback of residential property. The request for outdoor storage has been eliminated and will now be located within the new structure. The only time there may be any storage is when off-loading occurs and is waiting for storage of materials to be placed in the warehouse. The plan and building has been revised and we are requesting a 50' x 80' one story addition to the existing warehouse to expand the facility. The property was used for many years by Goulet Supply as a wholesale sales center and a warehouse for plumbing supplies. The property is located in the General Business

district and is abutted by single family residences and the Suisse Chalet Hotel. The property does not have access to Borthwick Avenue because a small piece of land owned by the hotel adjacent to the lot and runs along the rear property line.

Attorney Pelech stated that all the criteria has been met to grant the request. There will be no diminution to surrounding property values and added that the Zoning Ordinance interferes with reasonable use of the property. The proposed addition is a natural outgrowth of the existing nonconforming use. The public or private rights of others would not be interfered with to grant the Variance since there are none. To grant the request would be consistent with the spirit and intent of the Ordinance and substantial justice will be done because there will be no benefit to the public to deny the Variance. The applicant has been a good neighbor to the residential property owners over the years.

Attorney Pelech stated that to deny the application would not do substantial justice and would create a tremendous hardship to the owner; therefore, the hardship on the owner will outweigh any benefit to the general public to deny the Variance. There will be an increase in the tax base for the City; He stated that to grant the request would not be contrary to the public interest because public interest will benefit due to the increase in the tax base for the City as well as an enhancement to the property because outdoor storage of materials will be eliminated. Attorney Pelech asked that the Board look favorably on the application.

Mr. Horrigan asked what is being done to the detention pond to prevent water from becoming stagnate? Attorney Pelech replied this detention pond is one that would not contain water for more than a 24-hour period. The Technical Advisory Committee and Planning Board require that a detention pond have a maintenance schedule showing on the plan that it be maintained with a report to Public Works Department indicating that the pond does not become silted or lose its effectiveness.

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 the applicants have come along way from the previous application in eliminating the outdoor storage and not come within 100' of the residential area. The addition has been made smaller. The hardship in this case is because there is only a limited amount of land that can be used without creating further nonconformity. There will be no problems in the rear setbacks. Mr. Horrigan stated he agreed and added this is a reasonable use of the property and there is no reason to deny it compared to the previous proposal.

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

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**5) Petition of John Shore, owner**, for property located at 77 Burkitt Street wherein a Variance from Article III, Section 10-302(A) is requested to allow a 16' x 24' detached garage with a 1' right side yard where 10' is the minimum required. Said

property is shown on Assessor Plan 159 as Lot 21 and lies within the General Residence A district. Case # 8-5

**SPEAKING IN FAVOR OF THE PETITION**

Mr. John Shore, the owner of the property, stated there is an existing shed that he would like to remove and build a 16' x 24' vinyl sided garage. He submitted photographs of the deteriorated shed to the Board members to review and added that the lot is only 50' wide. He stated the proposed garage will be a littler taller and wider.

Mr. Witham asked Mr. Shore if he would consider using clapboards for the siding rather plywood siding. Mr. Shore replied that what he is proposing will be better than what is existing, however, he feels that to use clapboards would be quite costly.

Mr. Shore stated there are two trees on his lot, one is quite dead and the other is growing into the shed. They will both be removed.

**FURTHER SPEAKING TO THE PETITION**

Mr. Roger Greeley, a direct abutter at 95 Burkett Street, stated he was concerned about the trees that will have to be removed and asked if they could be preserved? Mr. Shore replied these trees could not be preserved; however, after the garage is built, they will consider planting new trees.

Mr. Witham asked if there would be a new foundation? Mr. Shore replied there would be.

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 the existing shed is in pretty sad shape and should be replaced. The proposed garage will have a greater setback; therefore, the request can be granted. Mr. Rogers stated he agreed and suggested that Mr. Shore and his abutter Mr. Greeley get together and discuss the options for planting another tree; therefore, this petition can be granted.

Chairman Blalock stated this Board does not have authorization to preserve trees; however, the petitioner has met all the criteria to grant the request and added in the spirit of good neighbors, the owner and his abutter should get together to discuss options for planting a tree.

Mr. Horrigan stated he also agreed and added that there is no other location on the lot for the placement of the garage because of the configuration of the lot.

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



**6) Petition of Richard H. Levesque, owner,** for property located at 320 Grant Avenue wherein a Variance from Article III, Section 10-302(A) is requested to allow a 10' x 16' shed creating 21.3% building coverage where 20% is the maximum allowed. Said property is shown on Assessor Plan 268 as Lot 37 and lies within the Single Residence B district. Case # 8-6

**SPEAKING IN FAVOR OF THE PETITION**

Mr. Levesque, the owner of the property, stated he would like to have a 10' x 16' shed for storage of outdoor equipment for summer and winter; however, it creates an increase in his building coverage. He stated there will be no diminution to surrounding property values and added that he feels it will enhance his property values. He contacted all his abutters and all agreed that to allow shed would make no difference to them.

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 this is a minor request being only an increase in building coverage of 1.3%. There would be no harm created to grant the request and the property will be more attractive. All the criteria has been met. Mr. Jousse stated he agreed and added there have been no abutters to speak in opposition to the petition. The existing shed is rusted and needs to be replaced; therefore, this request can be granted.

Chairman Blalock stated he agreed and added it would not be fair to deny the request for an increase of only a 1.3% lot coverage.

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



**7) Petition of Heron Realty Trust, owner, Sean Correll, applicant,** for property located at 917 Greenland Road wherein the following are requested: 1) a Variance from Article II, Section 10-206 to allow a takeout/eatin cafe in the former Sherburne Store, 2) a Variance from Article XII, Section 10-1204 Table 15 to allow 16 parking spaces to be provided where 25 parking spaces are required, 3) a Variance from Article XII, Section 10-1201(A)(2) to a 14' one way travel lane where 18' is the minimum required; and, 4) a Variance from Article III, Section 10-302(A) to allow 30% open space where 40% is the minimum required. Said property is shown on Assessor Plan 259 as Lot 7 and lies within the Single Business B district. Case # 8-7

**SPEAKING IN FAVOR OF THE PETITION**

Mr. Sean Correll, the applicant, stated he resides in the immediate area and added the property has always been used as a gas station. He stated he was proposing to open a take out café. He feels this use will benefit the area. There will be tables, but not for sit down eating, but just to sit and wait for take-out orders. Mr. Correll stated he is proposing to remove the gas tanks and turn it into green space.

Chairman Blalock stated there is a petition signed by abutters indicating they were not in opposition to the petition.

Vice-Chairman LeBlanc asked if two curb cuts could be put in where there are none at the present time. Mr. Correll replied that his application will need Site Review; however, there will be a sidewalk along the front of the property line and added that he has worked with the City Engineer who has indicated where the location of the curb cuts would be most affective on the property.

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

Attorney Bernard Pelech, representing his mother-in-law is a direct abutter to this property, stated the Legal Notice reads that this property is Single Business B district and should have indicated the property was located in the Single Residence B district. To allow this application will have a critical impact on the surrounding properties and the people who signed the petition are not direct abutters, but people who live in the Pannoway Manor. He feels the proposed use is in the wrong location. The travel aisles are narrow and this use should not be allowed.

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

Mr. Mike McDonald of Heron Realty Trust, stated he was concerned for the safety of the children in the neighborhood since this restaurant is where the school busses stop for pick up and delivery of school age children. He added that he had spoken with Mrs. Wholley on several occasions and her concern was that people buy their lunch and proceed to sit on her lawn to eat their lunch.

Vice-Chairman LeBlanc asked how long the property has been vacant. Attorney Pelech replied a year and a half.

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

### **DECISION OF THE BOARD**

Mr. Witham made a motion to grant as presented and advertised; Mr. Rogers seconded. Mr. Witham stated the property is an empty gas station/small grocery store and take-out food. The proposed use is a much more reasonable use than what was there previously. The property will never have a single family home located on it and added that he did not feel that parking would be an issue since most of the customers will be pedestrians from local businesses and medical facilities. He feels the plan has been thoroughly thought out and added the proposed use is one of the best solutions for this property. Mr. Rogers agreed and added there is a hardship with this property and added that he feels the use will be a great addition to the neighborhood.

Chairman Blalock stated he agreed and added that the use will be much less intense than a gas station. The reasons for granting the application far outweigh the reasons for not granting.



Mr. Horrigan stated the property use is quite reasonable and will improve the lot as well as surrounding properties.

Mr. Jousse stated he also agreed and added that he could not see anybody building a home on this lot. The lot is vacant and the proposed use will be a great improvement over what is existing. The hardship in this case is because of the location of the property and what the past use had been.

Mr. Holloway stated he will not support the motion because he feels the property can be put to a better use than what is being proposed.

Vice-Chairman LeBlanc made a stipulation to the motion that the requirements of Article V pertaining to screening be adhered to. Both the maker of the motion and the second agreed to the stipulation.

The motion to grant with the added stipulation passed with a 6 – 1 vote with Mr. Holloway voting in the negative.



**8) Petition of Peter and Lee Vandermark, owners,** for property located at off Ridges Court wherein a Variance from Article II, Section 10-206 is requested to allow a residential dock on a vacant lot in the same ownership as the single family residence lot across the street in a district where such use is allowed as an accessory use to the primary use on a lot. Said property is shown on Assessor Plan 207 as Lot 60 and lies within the Single Residence B district. Case # 8-8

**SPEAKING IN FAVOR OF THE PETITION**

Mr. Vandermark, the owner of the property stated he has used this lot that is located directly across the street from his lot for water access. We have used this lot for the past 14 years to access to his boat. In October of 2001, the application process was started and approvals have been obtained from the Port Authority, the Conservation Commission and Environmental Services. However, it was recently discovered that a Variance was required to put the dock in. The dock will allow the shore line to be in better maintained eliminating any damage to the marsh grass.

Chairman Blalock stated this is a lengthy process to obtain all the approvals that are required having received approvals from the Conservation Commission, the State and Army Corps of Engineers and to build a large dock will protect the environment.

Vice-Chairman LeBlanc stated all the permits are in place with the exception of approval from the Board of Adjustment. Mr. Vandermark replied that was correct.

Mr. Horrigan inquired about the letter from the New Hampshire Port Authority. Ms. Tillman, Planner I replied there is an amended letter from Donald Nelson listing it correctly as being on the Piscataqua River back channel – it is a typo.

Ms. Kathleen Thompson, a direct abutter, stated she approved of the proposal.

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

**DECISION OF THE BOARD**

Mr. Rogers made the motion to grant as presented and advertised; Mr. Horrigan seconded. Mr. Rogers stated that if this request had been made for his own property, it would have been an accessory use and permissible; however, it is on his own property, but located across the street. The hardship is because of the damage that could be done to the wetlands in not using a dock. There is no reason to not grant the request since all the required approvals have been received. Mr. Horrigan stated he agreed and it is only because of glitch that we are here. The lot is very small and has no primary use other than to provide access to the water. The adjoining properties in this neighborhood have docks as well; therefore, this use does not differ from other properties in the area. A hardship would be created to the owner if the application was denied.

Mr. Jousse stated he applauded the petitioner for having his application in order.

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



**9) Petition of Joe Moore, owner,** for property located at 45 Pearson Street wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) are requested to allow: a) a 24' x 28' garage with master suite above with a 20' front yard where 30' is the minimum required, b) a 4'6" x 6'6" front entry with a 4'6" front yard where 30' is the minimum required; and, c) a 17' x 17' one story kitchen addition and irregular shaped 513 s.f. deck with all addition creating 23.9% building coverage where 20% building coverage is the maximum allowed. Said property is shown on Assessor Plan 232 as Lot 98 and lies within the Single Residence B district. Case # 8-9

**SPEAKING IN FAVOR OF THE PETITION**

Mr. Roe Cole, the designer for the proposed garage, stated the existing garage sits 10' from the existing property line. The home is a split ranch and we have pushed the addition as far back as possible. The owner is willing to scale back the deck to meet the lot coverage issue; however, he feels the request is minimal.

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; both Mr. Rogers and Vice-Chairman LeBlanc seconded. Mr. Horrigan stated there are three parts to the Variance. The street is a dead end and the house is conforming with surrounding properties; therefore, we are not creating anything that would be different from the other properties in the area. Mr. Rogers stated he agreed and added that the lot size has doubled and will not have an impact on the surrounding property values. To

request a small entryway on the front of the dwelling is a minimal request. Vice-Chairman LeBlanc agreed and had nothing further to add.

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

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**10) Petition of Susan Souriolle, owner**, for property located at 100 Stark Street wherein a Variance from Article III, Section 10-302(A) is requested to allow an 8' x 24' front porch with an 8' front yard where 15' is the minimum required. Said property is shown on Assessor Plan 159 as Lot 49 and lies within the General Residence A district. Case # 8-10

**SPEAKING IN FAVOR OF THE PETITION**

Ms. Souriolle, the owner of the property, stated there is many children in the neighborhood and the gathering place is in her back yard. She presented a petition signed by abutters stating that the request was minimal and a porch would enhance the property.

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. Witham seconded. Mr. Rogers stated he was a "firm believer" of front porches. The house has a 16' existing front yard setback and any kind of front porch would make the house nonconforming. There is no need to give the owner's a hardship by denying the application. Mr. Witham stated he agreed and added he welcomes front porches and feels the application is in conformance with the Ordinance.

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

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**11) Petition of Heads Up Real Estate Group, LLC, owner**, for property located at 97 Chestnut Street wherein the following are requested: 1) a Variance from Article II, Section 10-207 to convert a former physician's office to a one bedroom apartment on a 1,841 s.f. lot where a total of 3,000 s.f. is required, and 2) a Variance from Article XII, Section 10-1204 Table 15 to allow one parking space to be provided where six parking spaces are required. Said property is shown on Assessor Plan 116 as Lot 25 and lies within the Mixed Residential Office district. Case # 8-11

At the request of the applicant, this application has been tabled to the September 17, 2002 meeting.

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**12) Petition of Wal-Mart Stores Inc., owner**, for property located at 2460 Lafayette Road wherein a Variance from Article II, Section 10-208(54)(a) is requested to allow the continuation of a temporary tent thru October 15, 2002. Said property is shown

on Assessor Plan 285 as Lot 16-2 and lies within the General Business district. Case # 8-12

**SPEAKING IN FAVOR OF THE PETITION**

Ms. Betsy King, the Manager of the store, stated the existing temporary tent is being used during our remodeling stage and would like to have the tent remain until October 15, 2002. The tent is for storage and for selling clearance merchandise.

Vice-Chairman LeBlanc asked if there was a bond posted to ensure removal of the tent? Ms. Tillman responded that she did not know since it was done through the Inspection Department, but she would check on the status.

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 the company is doing renovations and they are asking to continue the tent temporarily. The Company has indicated they will remove the tent on October 15<sup>th</sup> after the renovations have been completed and that we should not worry about imposing a Bond. Vice-Chairman LeBlanc stated he would like to stipulate that a \$100.00 Bond be posted to the City to ensure removal of the tent; however, if it is already in place, the stipulation will be withdrawn.

The motion to grant passed with a 6 – 1 vote with Mr. Jousse voting in the negative.



Let the record reflect that Mr. Witham stepped down from the following application.

**13) Petition of Charlie and Melissa McLeod, owners,** for property located at 67 Ridges Court wherein a Variance from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) is requested to allow a 5'9" x 10'3" front porch/entry with an 8'1" front yard where 30' is the minimum required. Said property is shown on Assessor Plan 207 as Lot 59 and lies within the Single Residence B district. Case # 8-13

**SPEAKING IN FAVOR OF THE PETITION**

Mr. McLeod, the owner of the property, stated he was working with an architect to improve the home and eliminate a safety hazard since the existing staircase exits out onto the street. We are proposing to remove the front staircase and replace it with a staircase that will be the same size exits to the side.

Vice-Chairman LeBlanc asked if the front door would be removed? Mr. McLeod replied it will be moved about 3' south.

Ms. Robin Hackett, an abutter located at 46 Ridges Court feels that this move will block her water views.

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 the existing stairs come forward out onto the street. To make the stairs parallel to the house will allow for a safer egress and will not interrupt anybody. Mr. Rogers stated the building will be much more attractive.

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

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**14) Petition of Dana W. Pratt, owner,** for property located at 410 Islington Street wherein the following are requested: 1) a Variance from Article III, Section 10-303(A) to allow a second dwelling unit in a two story garage on a 12,070 s.f. lot where 15,000 s.f. (7,500 s.f. per dwelling unit) is required; and, 2) an Equitable Waiver as allowed in NH RSA 64:33-a (Equitable Waiver of Dimensional Requirement) to allow the following: a) an 11' connector between the two story garage and the main building with a 4' left side yard, b) a 24' x 36' deck with a 10' x 8' enclosure with a 4' left side yard; and, c) an 8' x 9'6" pool pump house with a 1' left side yard where 10' is the minimum for all structures. Said property is shown on Assessor Plan 145 as Lot 34 and lies within the Mixed Residential Business district. Case # 8-14

## SPEAKING IN FAVOR OF THE PETITION

Attorney Bernard Pelech, representing the owner, stated that in 1983 Mr. Pratt received a Variance to construct a 24' x 24' two car attached garage on this property to allow a left side yard setback of 4'. However, there was a set of pored concrete steps existing that the owner could not remove so he constructed the garage 11' from the end of the existing dwelling. After the construction of the garage, the applicant connected the garage to the existing dwelling existing. He added that the Planning Department has indicated that a Variance should have been sought at that time to connect the detached garage and the dwelling unit to allow a left yard setback of 4" where 10" was required. This violation was not discovered until July of 2002 when the applicant applied for a Variance to be allowed to convert the two-car garage into a second dwelling unit; therefore the request for an Equitable Waiver.

Attorney Pelech stated the Equitable Waiver is requested to allow a 24' x 36' deck with a 10' by 8' enclosure on the deck as well as an 8' x 9-1/2' pool pump house. This pump house was constructed in conjunction with the swimming pool that was built in 1984 that created a 1' left side yard setback where 10' was required. These violations were also discovered in July of 2002 when application was made to convert the two car garage into a second dwelling unit.

Attorney Pelech stated that the applicant must demonstrate that the criteria has been met to grant the dimensional requirement as follows:

- that the violation has existed for 10 years or more, or

- that there has been no written notice of violation issued to the property owner during that time.

Attorney Pelech stated that the 11' x 15' connector between the garage and dwelling unit was constructed no later than 1985 and is not visible from the street; the 24' x 36' deck with the 10' x 8' triangular shelter was constructed in 1983 in conjunction with the pool as well as the 8' x 9-1/2' pump house. These structures and violations have existed for the past 17 or 18 years with no enforcement action; therefore, the applicant has met the requirements. Attorney Pelech stated the violations do not constitute a public or private nuisance nor will the surrounding property values be diminished.

Attorney Pelech stated that the deck, pump house or the connector will not interfere or adversely affect present or permissible uses of any properties in the area. He added that since the construction or the investment made in ignorance of the facts, that the cost of correcting the error outweighs any public benefit to be gained and it would be inequitable to require the violation be corrected. Regarding the 24' x 36' deck and pump house, the cost of relocating these structures would outweigh any benefit to the public since they are not visible and he added that it was the owner's position that it would be inequitable to require the violations to be corrected because of the cost of correction. Attorney Pelech asked that the Board look favorably upon the request for the Variance and the Equitable Waiver since all the requirements have been met.

Vice-Chairman LeBlanc asked if the owner had reasonable use of the garage? Attorney Pelech replied that the structure was not being used as a garage. Vice-chairman LeBlanc stated that by placing the dwelling unit in the garage makes the property more reasonable? Attorney Pelech replied it is a reasonable use and a more appropriate use.

Mr. Witham stated the records indicate that this Board granted approval for a single story garage and at a later date, a second story was added. A Building Permit was obtained but there was a stipulation made at that time that it remain a single family dwelling. Mr. Witham asked Attorney Pelech what his interpretation was of this stipulation. Attorney Pelech stated that he feels the stipulation that the building remain a single family dwelling was from the Zoning Board. Ms. Tillman clarified that it was written when the second floor was added to the garage so that it could not be turned into another apartment and was a stipulation of the City. Attorney Pelech stated that if the Variance is granted, it would supersede the stipulation. Ms. Tillman stated that the only way the application could have another dwelling unit would be if another Variance is granted. Attorney Pelech stated that up to four dwelling units per lot are allowed in this district. We are not here for the Variance for the second dwelling unit, but to have 6,000 s.f. of lot area where 7,500 s.f. of lot area is allowed if the building did not exist prior to 1980. However, if the building existed prior to 1980, only 1,500 s.f. of lot area would be required.

Mr. Horrigan asked that if a second dwelling unit was granted in the garage, would the grandfathered rights of the four dwelling units in the house remain and could we end up with five units? Ms. Tillman replied "no that this could not happen". Possibly two more units could be placed in the house, but there could not be any more than four as well as ample parking should be provided.

Mr. Rogers stated he was concerned about the previous Variance with the stipulation that was placed on the garage. Attorney Pelech has indicated that the request is only for the lot size; however, the Variance stipulates we are allowing a second dwelling unit in the two story garage and asked if that would supersede or would they have to come back and talk to the City about whether they would be allowed to have the second dwelling. Ms. Tillman replied "no they would not have to come back".

Chairman Blalock stated this request is based on lot coverage and not use since the use is allowed.

Mr. Horrigan asked Attorney Pelech to speak to the issue of the lot size. Attorney Pelech replied that this lot is 12,000 s.f. in size; and two adjacent lots are roughly 12,000 s.f. that are also owned by Mr. Pratt. In general, the lot sizes are generally smaller with the exception of the Martingale Inn which is a bed and breakfast being long and narrow and extends 300' deep. There are a number of multi-family units in that area; therefore the 1500 s.f. per lot area which is allowed is more appropriate and closer to what the average lot area per dwelling is in the area.

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

#### **DECISION OF THE BOARD**

Vice-Chairman LeBlanc made a motion to grant the Equitable Waiver; Mr. Rogers seconded. Vice-Chairman LeBlanc stated that there is no contention that the dimensions of the building that is being discussed have been located there for over ten years and will not impact anyone in the area. There have been no abutters present to speak in opposition; therefore this request can be granted. Mr. Rogers stated he agreed and added it has been proven there have been no problems and therefore, this request can be granted.

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

Vice-Chairman LeBlanc made a motion to deny the Variance request; Mr. Holloway seconded for discussion, Vice-Chairman LeBlanc stated that what was there before 1980 or after 1980 is irrelevant since we are dealing with the structure that was put up after 1980. The Zoning Ordinance is there to create open space and light and reduce density of properties. This falls under the current Zoning Ordinance and falls short of the space required for the number of dwellings on the property; however, whether the Board agrees to it or not, the stipulation placed on it should be adhered to. He feels that all the criteria has not been met and should be denied. Mr. Holloway stated he seconded for discussion purposes only.

Mr. Horrigan stated he will not support the motion because it is a mixed residential business neighborhood and believes it is in the public interest to encourage apartments and other dwelling units mixed in with commercial enterprises as what is on Islington Street. The lot is 12,000 s.f. in area, is very spacious and well landscaped, and almost looks like a recreation area; therefore, there is no reason to deny another dwelling unit for this part of the property. This property, compared to other properties in the neighborhood,

is larger than most and there is no specific reason that the property cannot be used in the fashion requested.

Chairman Blalock stated he will not support the motion to deny since the applicant is only short 1500 s.f. per unit. It does sound like a lot of relief being requested; however, it is not when compared to what is required where you need 7500 s.f. and only 6,000 s.f. is being provided. For the Portsmouth area, that is quite a bit of lot area particularly for the downtown area. The use is allowed and feels the necessary criteria has been met to grant a Variance.

Mr. Witham stated he will support the motion because this project has already been dealt with and agreed upon.

The motion to deny passed with a 4 – 3 vote with Mr. Horrigan, Mr. Rogers, and Chairman Blalock voting in the negative.

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**III. 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 September 17, 2002 at 7:00 p.m. in the City Council Chambers.

Respectfully submitted,

Joan M. Long  
Secretary

/jml