

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

7:00 P.M

**OCTOBER 15, 2002**

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

**MEMBERS EXCUSED:** Chris Rogers;

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

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**Please note:** There was a change in the agenda. Agenda item D, which was held over from last month, Petition of Eastern Development LLC, owner, UR of Portsmouth, Applicant, for property located at 1465 Woodbury Avenue was withdrawn indefinitely by written request of the owner.  
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**I. APPROVAL OF MINUTES**

A motion was made and seconded to accept the minutes from the meeting of September 17, 2002 and it was approved unanimously with a 7-0 vote.

**II. OLD BUSINESS**

**A. A. Petition of Marilyn M. Jones, owner,** for property located at 201 Echo Avenue wherein a Variance from Article III, Section 10-304(A) is requested to allow a 9'4" x 36' plant/pool room with a roof deck above with a 24' left side yard where 30' is the minimum required. Said property is shown on Assessor Plan 237 as Lot 57 and lies within the General Business district. This petition was tabled at the September 17, 2002 meeting to the October 15, 2002 meeting. Case # 9-1.

This petition was re-advertised and appears again under Public Hearings.

A motion was made and seconded to take this petition off the table and withdraw it from the agenda that passed unanimously with a 7-0 vote.

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**B) Petition of Jocelyn Frechette and Gerald W. Howe, owners,** for property located 45 Miller Avenue wherein a Variance from Article III, Section 10-302(A) is requested to allow a 9' x 17' one story addition to the dining room creating 28.7% building coverage where 25% is the maximum allowed. Said property is shown on Assessor Plan 129 as Lot 21 and lies within the General Residence A district. This Petition was tabled at the September 17, 2002 meeting to the October 15,2002 meeting.. Case # 9-6.

This petition was re-advertised and appears again under Public Hearings.

A motion was made and seconded to take this petition off the table and withdraw it from the agenda that passed unanimously with a 7-0 vote.

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**C) Petition of Elaine Michaud, owner,** for property located at 321 Dennett Street wherein the following are requested: 1) a Variance from Article III, Section 10-302(A) to allow a 16' x 23' accessory building with a full basement with: a) a 9'6" rear yard where 10' is the minimum required, and b) 26.6% building coverage where 25% is the maximum allowed, and 2) a Variance from Article II, Section 10-206(12) is requested to allow a real estate appraisal business (Wentworth Associates) in 368 sf of the accessory building where only 300 sf is allowed for Home Occupation I. Said property is shown on Assessor

Plan 160 as Lot 40 and lies within the General Residence A district. This Petition was tabled at the September 17, 2002 meeting to the October 15, 2002 meeting.. Case # 9-9.

A motion was made and seconded to take this petition off the table that passed unanimously with a 7-0 vote. Mr. Jousse did not sit on this hearing.

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

Attorney Charles Griffin spoke on behalf of Elaine Michaud. He handed out a packet of exhibits to the board members that he referred to during his presentation. In April of 2002, Mrs. Michaud, who is a licensed real estate appraiser, applied for and received a building permit to tear down a 10' X 20' storage shed that was supported by wooden pilings and a concrete slab that was fairly dilapidated and replaced it by a 16' X 20' carriage shed with a concrete foundation. The permit granted in April was Exhibit 1 in the packet. The 16' X 20' concrete foundation was poured and in May the foundation was approved and the Building Permit reflects the remark "5/21/02 Foundation okay". At the time that Mrs. Michaud received the permit in April, she intended to use the structure upstairs for storage and some space in the basement for an exercise room with a shower and a toilet. In the back of her mind she had planned that someday she might be able to move her office out of her house and into this structure but in April she couldn't afford to do so. However, circumstances changed. Mrs. Michaud's son, who lives in Arizona, came back and indicated to his mother that he could help her with her construction. What had previously been high above her expectations became a reality for her and her son proceeded with the expanded structure. In June, in response from an inquiry from a neighbor, the Code Enforcement officer came by, concerned principally about the height of the structure. The height issue has been resolved but the Code Enforcement officer requested that the property be surveyed and that survey indicated that the northeast corner of the building is 9'6" from the rear property when, in fact, it should be 10' away from the property line. And the survey also revealed that the total building coverage on the lot would be 26.6% as opposed to the 25% that the ordinance allows. In addition, it was also determined that the total square footage for the room that would be used for the home office was 368 square feet and that the scope of the building permit that had been issued in April had been exceeded. The Code Enforcement officer issued a Cease and Desist order and Ms. Michaud applied for variances as a result of that Cease and Desist Order. Granting of the variances will not result in the diminution of the value of the property. Mrs. Michaud is replacing what can only be described as an eyesore. The elimination of what is obviously an eyesore and replacing the structure with the same architectural style of the house will not only increase the value of Mrs. Michaud's house but also the value of surrounding properties as well. New construction will require some filling and grading. At the present time the property slopes down remarkably from the street towards the shed. The question was raised as to whether or not the filling that would be required would alter the drainage and possibly adversely effect abutting properties. Attorney Griffin represented to the Board that it will not. A retaining wall will be constructed which will contain any runoff on Mrs. Michaud's property and that will be built in accordance with the recommendation of Gregsak Engineering, Inc. That letter indicates that they have reviewed the grading issues and they recommend a bolder retaining wall at the northwest corner of the parcel. Together with the installation of what is known as a "French drain" at the base of the wall to insure that there will be no ponding or runoff of water due to the construction of the wall. The construction of the retaining wall was already shown on the revised plans, which was Exhibit #6 distributed to the Board members. So, it is believed, with the implementation of these measures, there will be no risk that water from the graded lot will go onto an abutting lot and therefore there will be no risk to the value of the properties. Secondly, we believe the granting of the variances will be in the public interest. Mrs. Michaud has been a licensed real estate appraiser for 17 years, she has had her own business, Wentworth Associates, for 10 years and she has worked out of her home for the last 4 years. She is the only employee of this appraisal business and she will remain the only employee of this business. Again, there was the question raised as to whether the real reason Mrs. Michaud wanted larger office space was because she either has or intend to hire additional employees. The answer to that question is, no, she is not. Mrs. Michael does farm out some of her work to other appraisers when the work load warrants it but this work is done strictly by e-mail and performed by these appraisers at their offices. Attorney Griffin had two letters from individuals, Debbie Mae Kershaw and Cheryl Lambrecht, who are independent contractors who occasionally perform work for Mrs. Michaud but they do their work at their own homes or their own offices. The granting of the variance to permit the addition will also result in eliminating any encroachment, which is shown on Exhibit #3. Attorney Griffin also shared a petition that was signed by Mr. Steve Noel who owns

property that directly abuts Mrs. Michaud's property to the rear, indicating that he does not object to the granting of the variances.

The granting of the variances will be consistent with the spirit of the ordinance. The previously existing shed had a zero rear yard setback and encroached on the city right of way. While the new structure will still be somewhat non-conforming in terms of setback requirements and lot coverage, overall it will be significantly more conforming to the terms of the ordinance than the previous structure.

Next, denial of the variances will result in unnecessary hardship. As far as the setback and lot coverage variances are concerned, the purpose of lot coverage and setback requirements is to prevent overcrowding, danger from fire and safety hazards, etc. In this particular case, the increase of the setback from zero to 9'6" is going to enhance safety and decrease danger from fire and other hazards. The dimensions of the lot are not completely rectangular. Exhibit 2 shows that while the front and rear dimensions of the lot are the same, 60 feet, more or less, the right side is 124' and the left side on Heritage Hill Road is 123', making the lot slightly less than a perfect rectangle. This resulted in the northeast corner of the foundation being 9'6" off the rear property line. Under the circumstances, no fair and substantial relationship exists between the general purposes of the zoning ordinance and the reasonable use of the property.

As far as the building coverage is concerned, the foundation was poured pursuant to a valid permit that was issued in April by the city. Because the excess lot coverage is slight, a little over 1%, Attorney Griffin does not believe there is any fair and substantial relationship that exists in the purpose of the zoning ordinance and lot coverage restrictions. Adversely, to deny the variance for lot coverage, under these circumstances, given the fact that the foundation is already poured, would, in his opinion, deprive the property owner of a reasonable use of her property. To deny the variance because the northeast corner of the foundation is 6" closer to the rear property line than the ordinance allows, again, will also deprive the property owner of a reasonable use of the property because both accessory buildings and home occupation I are permitted uses in the zoning where this property is located. Because the uses are permitted, the granting of the variances will not injure the public or private rights of others.

As far as hardship in terms of the variance for the area of the home occupation is concerned, Attorney Griffin referred the Board to Exhibit #6. The plans show the retaining wall but also the dimensions of the home office. The exterior dimensions of what is shown on that plan is 23 x 16, or 368 square feet. The interior dimensions are 15' X 22' or 330 square feet. But, of those interior dimensions, you can see a stairwell that measures 11'8" X 48" or 46.67 square feet. If you deduct the area of the staircase from the 330 square feet, the main square footage is 2913.3 square feet, which is less than the 300' required by the ordinance. While in theory, there may be over 300', practically speaking, by the time you take out the staircase, and take out the bumpouts which are put there to make the appearance of the house consistent with the main house, the end result of useable square footage meets the requirements of the ordinance. Referring to the definition of Home Occupation I is interesting because it allows a maximum of 300 square feet in a dwelling or accessory building, for said use. Contrasting the definition of 300 square feet of Home Occupation I to the definition of gross floor area, gross floor area talks about, in a nutshell, the external dimensions to the building. The difference between gross floor area and square feet is critical. When you calculate the difference between gross floor area, which is the external dimensions of the building, 368, and then take a look at the square foot inside that is to be used for the intended purpose, which is under 300 square feet, you end up with less than 300 square feet. In taking a look at Exhibit 12, where it says "300 square feet in a dwelling or such use", the phrase "such use" is critical, because the stairway is not part of the "for such use" and the bump-outs are not part of the "for such use". In other words there is a different standard where a home occupation is talking about area inside the building that is going to be used for that particular occupation whereas for the most part you deal with gross floor area which talks about exterior dimension. We are talking about something different with respect to Home Occupation. Again, in this particular case, enforcing the terms of the ordinance does not make sense particularly when the spirit and intent are not violated, the values of surrounding properties will not be diminished and the public and private rights of others will not be harmed. The granting of the variances will result in substantial justice. Home Occupation and accessory buildings are permitted uses in this district and there are some other Home Occupations in this district. Mrs. Michaud fully intends to comply with the requirements of Home Occupation I and there will be no residential employees, no deliveries, no signage, no clients, no vendors nor will the general public visit the home occupation, and there will be no outdoor storage on the property. As you know, representation made by an applicant seeking

the variances are deemed to be conditions or stipulations and are binding on the applicant and Attorney Griffin asked that the Board accept these representations as an acceptable use of the property.

In conclusion, Attorney Griffin believed that the requirements for granting the variances had been satisfied and he asked that the Board approve the petition as advertised.

Vice-Chairman Leblanc asked if Attorney Griffin was representing that the bumpouts on Exhibit #6 aren't really part of the floor plans? Vice-Chairman LeBlanc thought that a bumpout on any building becomes a part of the useable space of the building whether he says they are or not. Also, the overhang for this seems to be a lot larger than the current foundation.

Attorney Griffin indicated that, with respect to the bumpout, he had not gone into the structure and looked at the condition that it is in now but the walls really angle down quite sharply from the point where you get to the bumpout and you can't stand up without your head hitting the ceiling. So, that would be the basis of his statement. As far as the appearance that the scope of the structure seems to drop over the foundation.

Vice-Chairman Leblanc asked: On Exhibit 4, the picture on the right on the bottom, what is the foundation of that building?

Mr. Roberts indicated that the simplest line close to the ground, the single weight line.

Vice-Chairman Leblanc asked about the wavy lines to the left?

Mr. Roberts indicated that that's representing grade.

Vice-Chairman Leblanc stated that, if that was the foundation, when you look at the part of the house that is above that there seems to be a fairly substantial amount of space.

Mr. Roberts indicated that those were overhangs that are included in the calculations. One reason the bumpouts are required is because they are trying to maintain the minimum overall building impact on the site to lower the walls so that all the walls in the 300 feet of office are only 5' high at the eaves line. There is useable floor space but it's trying to balance the lack of useable floor space.

Vice-Chairman Leblanc asked about the drains that they were putting in. They are along the north property line? And where are those drains going to drain to?

Mr. Roberts stated that they will all be below the grade line of Mrs. Michaud's property. French drains are subterranean. There will be an equal amount of water that enters the property now and it will continue to enter her property. However, it will not blow onto the abutters.

Vice-Chairman Leblanc clarified that there would be a holding tank underground?

Mr. Roberts stated that it is a trench laid with 3/4" stone with a pipe at the bottom. It's very commonly used on all scales of projects and it's a very minimal amount of flow that is there now.

Vice-chairman Leblanc asked if there would be a spot where the pipe would empty out onto either city streets or adjacent properties?

Mr. Roberts indicated that it would empty just beyond the limit of the garage itself and it will improve the drainage to the surrounding properties.

Mr. Horrigan referred to the materials that they had originally received and indicated that it shows a full size bathroom on the 1<sup>st</sup> floor of the structure and he was curious about how that would be used with the business and he also asked about the exercise room.

Mr. Roberts stated that the initial plan was to have the storage on the 2<sup>nd</sup> floor and realize the basement as an exercise area. What is going to happen now is that a portion of the basement area will be used as an exercise area and the upstairs will be used as an office. The bath is not a full bath but a 3/4 bath as it has a lavatory, a sink and a shower, to be used after Mrs. Michaud exercises.

Mr. Horrigan indicated that the reason he was asking was because he wanted to know what the driving need of a bathroom was?

Mrs. Michaud stated that the shower is a steam shower because she has arthritis and the steam shower helps to relieve the pain. That is why she has to exercise, also. She belongs to a gym but would like to save that money.

Chairman Blalock clarified that the need for the bathroom was the exercise room.

### **SPEAKING IN OPPOSITION OF THE PETITION**

Steve Miller, of 38 Thornton Street, spoke in opposition. Mr. Miller stated that he did not have any clearer picture of this evening than he did before. It also makes him uncomfortable that these variances are being asked for after the fact. Certainly, tonight, many reasons were heard for that and he can't speak to any of them but it just makes him uncomfortable. We talk a lot about the residential needs of Portsmouth and it seems like the neighborhoods are constantly under pressure and his neighborhood has been under pressure from other businesses nibbling away at all of the corners so he personally does not want to have businesses in his neighborhood. It's a great neighborhood and he worries about that kind of precedent being set. He is getting a better understanding of the Home Occupation tonight and now we even have a new definition of Home Occupation and the space allowable. He is concerned about his neighborhood and he wants it to be a residential. He is against the variance.

Attorney Griffin reiterated that, for zoning purposes, a Home Occupation really isn't considered a business in the traditional business sense. Otherwise, it would not be a permitted use in the district. So, he would ask that the Board bear that in mind. The Home Occupation does not require a variance. What they are here for is a series of setback variances.

### **DECISION OF THE BOARD**

Vice-Chairman Leblanc proposed that the board grant the petition as presented and advertised, with the stipulation that all of the conditions of Home Occupation I be adhered to. Mr. Witham seconded. Vice-Chairman Leblanc stated that the applicant's attorney made a very good presentation and, in fact, 6" on the north side of the building is really a small amount and the survey was done after the foundation was put in place. The amount of building coverage, 1.6%, is still pretty minor when you are looking at this particular lot. As far as the 68 feet that the occupation will occupy over the 300 square foot limit is again a small amount of relief being asked for, and, with the stipulations that are inherent in the Home Occupation, that there be no non-resident employees, no deliveries, no signage, no clients, no members of the public visiting this place, no outdoor storage of materials or products, the character of the neighborhood would be protected as the resident has asked for tonight.

Chairman Blalock clarified that the intent of Vice-Chairman Leblanc's stipulation is that all the conditions of Home Occupation I be adhered to but he also clarified that he is granting a variance for 68 square feet.

Mr. Witham stated that he agreed with Vice-Chairman Leblanc. He initially had a lot of concerns with this and shared a lot of the concerns of Mr. Miller but the closer he looked at it and the presentation, everything appears to have been done in good faith. They got a building permit and usually for a lot of this size a survey isn't required. They were asked to go back and take survey but it was their intent originally to stay within 10'. He feels that is a very minimal request. He feels that the work that was done was done in good faith. He does feel that it was a stretch to submit the plans that were submitted and call that building a shed when it was their intent, in the future, to maybe call that a home office. In regards to the building coverage, again, it is 1.6% which is very minimal relief and should have a minimal effect on the abutters. The closest abutter has spoken in favor of this project. And, the 68 square feet again is a very minimal relief and they could put walls around the stairs but he doesn't see how that serves any purpose. He feels that this is a grantable request.

Chairman Blalock stated that he agreed with Vice-Chairman Leblanc and Mr. Witham. If you take each part of the request individually they are all minimal requests. 6" on the rear yard and 1.6% of the building coverage, and 68 square feet of space for the home occupation is probably a little more than minimal however when you accept the explanation of the staircase and the useable space and what the intention of that part of our zoning code is for certainly 300 square feet or less is what is practically going to be used. In that sense, Chairman Blalock does feel that it meets the spirit of the zoning ordinance and in his opinion the

Attorney has explained this to the degree that he feels the five criteria for the variance have been met. The stipulation certainly protects the fear of some of the neighbors.

Mr. Horrigan stated that he intends to vote for the petition but wanted the record to show that he did not agree with the argument about useable space, open staircases, etc. It strikes him as an argument that could render the whole zoning dimension requirement almost useless. It's 300 square feet, which is the maximum square footage, and he can see why this particular structure went over that because it was planned to be an office originally. He certainly could not accept the argument that there was some concept of useable space that is implicit in our zoning code.

Chairman Blalock stated that, if someone had an office in their home, they would only consider the space in the office, not the hallway leading to it. In that concept, he accepts the explanation that useable space would be counted if this office was actually in the house itself.

Mr. Horrigan disagrees, for the record.

Motion to grant passed unanimously, with stipulations, with a 7-0 vote.



Chairman Blalock reconfirmed that item D, Petition of Eastern Development, LLC, owner, UR of Portsmouth, applicant, for property located at 1465 Woodbury Avenue, has been withdrawn indefinitely.

**III. PUBLIC HEARINGS**

**1) Petition of Jocelyn Frechette and Gerald W. Howe, owners,** for property located 45 Miller Avenue wherein a Variance from Article III, Section 10-302(A) is requested to allow a 9' x 17' one story addition to the dining room with an 8' right side yard where 10' is the minimum required. Said property is shown on Assessor Plan 129 as Lot 21 and lies within the General Residence A district. Case # 9-6

**SPEAKING IN FAVOR OF THE PETITION**

Gerald Howe, owner of 45 Miller Avenue, stated that the existing structure is 8' from the sideline and they want to continue the line of the house, which would make it 8' from the side where a 10' setback is required. The existing house is not conforming. When it was built he believes it was built under a different ordinance. The granting of this petition would not diminish the property values of the abutters or the neighborhood and for that reason he requests the granting of this variance.

Vice-Chairman Leblanc asked Mr. Howe whether his house was parallel to the lot line. Where did he measure the 8' from?

Mr. Howe indicated that he measured from the front corner of the building and said it's probably 8 3/4" to Vice-Chairman asked if Mr. Howe had surveyed his lot?

Mr. Howe stated that it had not been surveyed since it had been purchased.

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

**DECISION OF THE BOARD**

Mr. Horrigan made a motion to grant the petition as advertised and presented. Mr. Marchewka seconded. Mr. Horrigan stated that this was a very familiar situation where there is a house located on a lot which simply prevents the owners from doing any kind of addition without violating one of the side yard dimensions and this particular proposal is merely extending the existing sideline. As Mr. Leblanc has pointed out, the sideline is slightly more than 8' so there is simply no fair or good reason for denying it. Mr. Marchewka stated that he agrees with Mr. Horrigan that it is a very minimal request and has little or no bearing on the abutters in any negative sense. For those reasons, Mr. Marchewka felt it should be granted.

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

**2) Petition of Marilyn M. Jones, owner,** for property located at 201 Echo Avenue wherein a Variance from Article III, Section 10-304(A) is requested to allow a 9'4" x 36' plant/pool room with a roof deck above with a 22 1/2' left side yard where 30' is the minimum required. Said property is shown on Assessor Plan 237 as Lot 57 and lies within the General Business district. Case # 9-1

**SPEAKING IN FAVOR OF THE PETITION**

Marilyn Jones, owner, stated that she wanted to build an extension so that she is able to have a room for her plants. As it is, she purchased an Endless pool to put in that area and it is about twice as big as a hot tub. It is taking up a lot of room so she doesn't have a lot of space at the end of her house. She would like to extend it out approximately 7 1/2 feet from the house. She doesn't have any neighbors, just powerlines. It's not like she will be infringing on anybody's privacy.

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

**DECISION OF THE BOARD**

Mr. Horrigan made a motion to grant the petition as advertised and presented. Mr. Marchewka seconded. Mr. Horrigan wanted to remind the Board that this particular residence sits just about on the Spaulding Turnpike, or the road leading to the Turnpike, and this is a well-landscaped lot that you almost have to look at twice to see the building when you drive by. It simply would not be in the public interest to demand that this owner make such an addition on the turnpike side. The relief for granting may look like it's a little large but there is no private residence abutting her, it is all commercial property to the north. Mr. Horrigan feels this is a very reasonable proposal and it constitutes minimal relief given the nature of the lot itself and it's location. Mr. Marchewka agreed with Mr. Horrigan and had nothing further to add.

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

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**3) Petition of Fanel Dobre, owner**, for property located off Sagamore Avenue wherein a Variance from Article II, Section 10-208 is requested to allow a 30' x 36' 1 1/2 story barn for a workshop for fishing gear, lobster traps and the storage of related fishing gear as well as the outdoor storage of fishing boats and traps. Said property is shown on Assessor Plan 223 as Lot 29 and lies within the Waterfront Business district. Case # 10-1

**SPEAKING IN FAVOR OF THE PETITION**

Fanel Dobre requested a variance for a barn. He is a commercial fisherman and wants to store his lobster boat and equipment in the winter.

Mr. Horrigan asked Mr. Dobre about his access to the lot. He asked if Mr. Dobre comes in on the road that comes in next to the Portsmouth Scuba business?

Mr. Dobre stated that he uses the backroad down to the dock.

Chairman Blalock indicated that Lucy Tillman could elaborate on this matter as she had had discussions with Mr. Dobre.

Lucy Tillman stated that his sub-division plan does show a 25' right-of-way going into the property. She is not sure whether that actually constitutes legal access to grant a building permit which was in the RSA's that was included in the Board member's packets. Her recommendation is to go forward on this Petition now and continue to do research and work with Mr. Dobre. If he needs to come back, the board can deal with the variance next month on the access. Right now, they were just dealing with the barn issues. It is a waterfront district and in reviewing the uses of the waterfront district, it looks like in 1995 access to the water was referenced for permitted uses. Mr. Dobre's lot is the only lot that doesn't have direct access to the water but is in the waterfront district.

Mr. Horrigan asked Mr. Dobre whether it was correct to assume that his access from the water was from the pier that adjoins his lot?

Mr. Dobre's response was yes, he is sharing the pier with Mr. Golter. He shares the right-of-way with Mr. Workman.

Mr. Horrigan asked if that was the very last pier before the condo development?

Mr. Dobre indicated that that was correct. There is the Mr. Workman pier, the Seaport pier and the Golter pier, which is the last one.

Mr. Horrigan asked if there were any walls or fences? It's hard to tell where Mr. Dobre's property is.

Mr. Dobre pointed out his property on a site plan that was submitted. He indicated where the road was off of Sagamore Avenue, shared by Seaport and Mr. Workman and also pointed out where the right-of-way was for Mr. Golter's property and the property that he owns. He pointed out the docks.

Lucy Tillman pointed out that the plan being reviewed was a 1953 plan, showing the right-of-way, although she could not find any sub-division records in the city back to 1953. But, the right-of-way is in Mr. Dobre's deed.

Chairman Blalock indicated that the Board would like to see the deed, showing the right-of-way.

Vice-Chairman LeBlanc asked Mr. Dobre if he also had a right of way to the dock that he was talking about?

Mr. Dobre indicated that he does not have a right-of-way to the dock but rather pays for use of the dock.

Mr. Marchewka asked Ms. Tillman to clarify exactly why Mr. Dobre needs a variance.

Ms. Tillman responded that any reference to uses within the waterfront business district refer to lots that have access to the water. His lot is one lot in from the water so that it doesn't directly abut the water. So, they couldn't find anything to match. It was always intended his uses be allowed in the waterfront business but it references lots with access to the water or associated uses with a landing, like a dock. This was something that was not anticipated. The full intent was to allow uses in the waterfront business to be able to do exactly what he wants to do.

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

### **DECISION OF THE BOARD**

Vice-Chairman Leblanc made a motion to grant the petition as presented and advertised. Mr. Horrigan seconded. Chairman Blalock requested that a reference to the access being cleared up by the Planning Department be included with the motion. Vice-Chairman Leblanc added that clarification of the RSA be included in his motion. Mr. Horrigan seconded. Mr. Leblanc stated that this was a unique case and the hardship is definitely with the land. The property does have a deeded right of way but not necessarily a legal right of way and that is the question that was before the Board. Having that clarified further, the Board can go ahead and allow Mr. Dobre to continue with his business on his property until this little issue gets cleared up. Mr. Horrigan agreed and further stated that it is zoned Waterfront Business and there is nothing else that he would be able to do with his land. Otherwise he would have to ask for a use variance and Mr. Horrigan would rather grant this variance as it is consistent with the adjacent properties along Sagamore Avenue and Sagamore Creek. This is a very positive variance to all concerned.

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

4) **Petition of Seacoast Newspapers, owner**, for property located at 111 Maplewood Avenue wherein a Variance from Article III, Section 10-304(B) is requested to allow a 10' x 12' storage shed less than 20' in height where 20' is the minimum height required. Said property is shown on Assessor Plan 124 as Lot 8 and lies within the Central Business A and Historic A districts. Case # 10-2

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

Wallace Berry, of Seacoast Newspapers, stated that they were requesting authorization to install a small shed for the purposes of storing lawn mowers, etc., and they don't meet the 20' height requirement.

Vice-chairman Leblanc asked if the dumpster is going to stay where it is. Mr. Berry confirmed that it was. Vice-chairman Leblanc asked if the shed would be in back of the dumpster and up against it. Mr. Berry confirmed that it will be between the existing building and the dumpster.

Vice-Chairman Leblanc asked if it was the type of shed that you just put down on cinderblocks and Mr. Berry confirmed that it was.

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



**DECISION OF THE BOARD**

Vice-Chairman Leblanc made a motion to grant the petition as presented and advertised. Mr. Marchewka seconded. Vice-chairman Leblanc stated that the restriction of requiring at least a 20' building in this district is ludicrous when all someone wants to do it put a lawn tractor and gardening equipment in it and, besides that, this is a structure that can be moved out of there very easily and he thinks that for all of those reasons the Board can grant this particular petition. Mr. Marchewka agreed with Vice-chairman Leblanc.

Chairman Blalock stated that it was the intent of the zoning ordinance that we don't have downtown covered with really short buildings but, in this case, it is not intended to eliminate this kind of use, especially from a lot the size of the Petitioner for it's particular use and, therefore, it is certainly grantable.

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

5) **Petition of Geraldine Mullavey, owner, and MotorBikes Plus LLC, applicant**, for property located at 1 Cate Street wherein the following are requested: 1) a Variance from Article II, Section 10-209 to allow retail sales and service of motorbikes and related accessories within an existing building in a district where such use is not allowed, and 2) a Variance from Article XII, Section 10-1204 to allow 9 existing onsite parking spaces to be provided where 13 parking spaces are required. Said property is shown on Assessor Plan 163 as Lot 36 and lies within the Office Research district. Case # 10-3

**SPEAKING IN FAVOR OF THE PETITION**

Attorney Bernard Pelech spoke on behalf of Gerladine Mullavey, owner, and MotorBikes Plus LLC, applicant. Attorney Pelech stated that he believed the Board members were very familiar with this site, in which the former Bannigan's Bicycle Shop was located. Prior to that it was Peddler's Speed Shop. It has always been a retail/sales location, located at 1 Cate Street. It actually preceded the other 1 Cate Street, which is the office condominium or the Eldredge Brewery, as Attorney Pelech refers to it in his memo.

The tax map showed that this is a very small lot with a rectangular, almost square building, right in the middle of it to such a degree that there is really very little room for anything other than the building. There is the capability of 9 parking spaces on-site which is the number of parking spaces that have been there since day one. Hopefully, the Board is also familiar with the business around the corner, Motorbikes Plus, which has been there for a couple of years, at the intersection of Islington Street and Bartlett Street. One of the advantages of them moving to 1 Cate Street would be that they would be moving into a building that is 2 1/2 times bigger than their present location. It will allow them to store all of their bikes inside so that there would not be any outdoor storage.

Attorney Pelech felt that the five criteria are demonstrated by this application. The first is that there is a hardship which is inherent to the land and the zoning ordinance interferes with the reasonable use of the property. This is a very small lot that was placed in the so-called Office Research District in 1995 when the district was created. The building had always been used for retail purposes, as such there was very little parking on site and there is not near enough parking if the building were to be used for office research use. Office research requires one parking space for every 250 square feet of building area where retail requires one parking space for every 400 square feet of building area

Attorney Pelech stated that, if you look at the surrounding property, the old Badger Rand complex abuts the property on one side, which is pretty much an industrial, construction, staging, storage yard. They do have 1 Cate Street, the Eldredge Brewery building, behind them and to the other side is an automobile repair facility. Photographs were submitted of this. It has a showroom in the front and in the back is a large area where the motorbikes can be stored and maintained and repaired. Attorney Pelech does not feel that this use would in any way create a diminution of the surrounding property values. As Attorney Pelech indicated, this is a mixture of surrounding property uses and one office research building to the rear.

Going to the second part of the hardship test, there isn't any fair and substantial relationship between the purpose of the zoning ordinance and this particular lot. The lot and the building predates the office research district. Prior to that it was an industrial zone. Because of its size, this lot doesn't serve to buffer any one district from another district. If you look at the Master Plan, the purpose of creating OR districts in 1995 was

to buffer industrial uses from residential uses. This building doesn't buffer anything from anything. It is literally surrounded on three sides by the Eldredge Brewery that does in fact buffer this site from the Morning Street residents behind. Attorney Pelech does not feel that this lot is big enough to serve as a buffer to anything..

The third part of the hardship test is that it is not going to interfere with any public or private rights of others. Attorney Pelech does not believe that this would diminish the values of any of the surrounding properties. This is a neat, clean use, a 9:00 - 5:00 use, there will be no outdoor storage of the bikes, day or night, which would be a benefit. The amount of traffic that is going to be generated is much less than what would be generated by an office use. The parking is more than adequate. There are, at most, 5 employees there at any one time. They don't have that many customers come at any one time and those that do come arrive on motorbikes. There will be no diminution of property values by virtue of the intensity of the use, which is much less than an office use, nor will they, from an aesthetic standpoint, diminish surrounding property values. They believe that the granting of the variance is not going to be contrary to the spirit and intent of the ordinance. As indicated, what the intent of the ordinance and what the Master Plan said the intent of the ordinance was, when Office Research Districts were created to replace industrial districts, it was to serve as a buffering factor. It made sense to create the office research district to buffer basically the Morning Street residential district.

Attorney Pelech believes that the granting of the requested variance will result in a substantial justice being done. He would require the Board to perform the balancing test of what would be the hardship upon the owner and the applicant seeking the variance if the variance is denied against some unknown benefit to the general public in denying the variance. In this case, the general public is going to be benefited by the granting of the variance and thus substantial justice would be done in granting the variance because the hardship on the owner would certainly outweigh any benefit to the general public. Attorney Pelech feels that the public is going to be benefited if the variance is granted because it will do a couple of things. It will allow the building to be re-used. The building has been vacant for over a year and it obviously went over the grandfather period, since Bannigan Bicycle Shop left. The only proposed use was discussed as a restaurant a year or so ago which was withdrawn because of the lack of parking. There is no way that a restaurant could go in there with respect to parking unless they had a shared parking arrangement with the Eldredge Brewery. This fits - this makes sense. Why? Because it is a very low parking user, it is a use that fits the building and it would be using the building for what it actually was designed for. We have a known tenant, which is MotorBikes Plus. They exist very well where they are now and are basically moving 100' or less, around the corner. That area of town needs low intensity users given the amount of traffic that comes through that intersection by the underpass on a daily basis. This is a use that is going to benefit the public. It provides a service that has grown substantially since they have been here and they provide a service to the community. They seem to have established a very strong customer base. Attorney Pelech had letters from some of the customers. They are a good corporate citizen and certainly he believes that it is to the best interest of the general public to allow Motorbikes Plus to move to this location.

As such, they believe that the five criteria have been met by this application. Attorney Pelech submitted a letter from the Portsmouth Police Relief Association, Patrolman Dean Outhouse indicating that Motorbikes Plus is a good corporate citizen, they are very concerned about the safety of their customers and they are a very substantial benefactor to the Portsmouth Police Relief Association. The Board also had a letter in their files from Gerald Howe, voicing his support for this application. Attorney Pelech stated that he hopes the Board will act favorably on these requests.

Mr. Jousse asked Attorney Pelech if motorcycles would be displayed, as they look at the plans, to the left of parking space #6, which would be in front of the windows?

Attorney Pelech indicated that there would be no display outdoors at all. There is plenty of room to display inside so there will not be any display outdoors.

Vice-chairman Leblanc referred to the photograph and asked about, on the left hand side of the building as you look at it there is a little tree and some grass space. Is that going to be sacrificed for a parking space?

Attorney Pelech indicated that it would remain.

Vice-chairman Leblanc asked how many parking spaces Motorbikes Plus has on their current lot?

Attorney Pelech indicated that there were 14 but most of them were not accessible because they have to display motorbikes in them during the day.

Vice-chairman Leblanc indicated that he had never seen their current location very crowded with cars.

### **SPEAKING IN OPPOSITION OF THE PETITION**

Robert Ducharme, Attorney for the Eldredge Park Condominium Association, also known as the Brewery, addressed the Board. Also present was Scott Verantino, one of the principals of TMS Architects, one of the owners who works on site at the Eldredge Park, as well as Vice-President on the Board of Directors of Eldredge Park. Attorney Ducharme stated that there are a lot of benefits to what Attorney Pelech suggested to this Board but there are some problems with it that he would like the Board to consider at this point. They feel that the application should be denied. They do not feel that it meets the 5 pre-requisites for approval. But, before he even gets there, Attonrey Ducharme pointed out to the Board that as part of the packet provided by the Planning Department, there is a memo concerning previous Board of Adjustment actions as well as an overview. You will notice that one of the things that they have requested to do is not just to show motorbikes and motorcycles but also to repair them. On March 4, 1980, the records reflect that a variance was granted to allow the construction of an addition and a special exception to allow the repair and sale of vehicles was conditioned so as to not allow "the repair of automobile engines and automobiles". An early incarnation of this board has already decided that on that site it is not appropriate to do repairs. One of the concerns that they have, for instance, as they go through the steps in no particular order is there has to be no diminution in value of surrounding properties. As the Board is well aware, it is not their burden to show that there will be a diminution but it is their burden to show that there will not be a diminution in property values. One of the things that they have said is that there will be no cars in front, no motorcycles, no motorbikes and that they have been a wonderful neighbor, and so on and so forth. Attorney Ducharme has some photographs that he provided to the Board. The first photograph shows the front entrance. That is important with regards to hardship perhaps upon Eldredge Park. The repairs are going to take place indoors but on nice days that door is going to be open, just as it is on the very first picture. There is going to be noise. They will be starting motorbikes and this is an office research area under the city's own guidelines in the zoning ordinance and it is supposed to be quiet. The next picture is from the train tressel up above. They mention that there are in deed 14 spaces there. There are a large number of motorbikes there and I understand that they are not going to display them outside and that's a good thing but you will also notice that they have a storage trailer and we haven't heard anything from them about what is going to happen with the trailer. We don't know if there are extra parts in there, we don't know if there are accessories in there, but they have been using one storage trailer on the property. Most importantly, looking at the 3<sup>rd</sup> photograph, you can see there is a huge pile of tires thrown in the back. If you look at Map 63 which details the 1 Cate Street lot, it is actually a very small lot with a very big building. Big in the sense that there is vitially no space around it other than 9 parking spaces. Referring to the map, the back of this building is the front of Eldredge Park. Anyone who is more than one floor above, and Eldredge Park is 5 stories, is going to be looking down directly on that. Again, it is not their burden to show that there will be diminution. There is no way around the fact that a huge pile of tires has got to go somewhere and it's not going to be stored inside. It can't do anything but negatively effect property values. It's sort of like having an area that is zoned for one thing and all of the sudden there is a land fill put in there. It may be the cleanest, nicest landfill in the world but if somebody wants to buy the place right next to it, they are still going to call it a landfill. This is still an auto repair shop where there are tires hanging around. As Bernie so eloquently put it, they have been a great neighbor, a great citizen and a great business and have been very clean but if this is the cleanest they can do, it's not necessarily bad but it's not appropriate for an office research district. If you look closely at the same photograph, there is also property behind the building where there is garbage. You will see red spots, which is why they have it in color. Those aren't bikes that are being displayed. There are either bikes being stored there waiting for parts of it's garbage. It's very hard to see what is behind that property unless you get out of your car and walk behind there. That's the same thing that's going to happen as there is no buffer in the back. As pointed out, the only buffer is Eldredge Park. It's shaped like a giant A, where the middle portion is Eldredge Park and the bottom with the 2 legs around it is this site. It is important to note that the property on either side is not owned by them but is owned by Eldredge Park. To get to the parking spaces 6 – 9 on the map, one of the things that they have to do is access Eldredge Park property to get into the parking spaces. As the Planning Department can tell you and the records will show, there was already a variance permitted

when Eldredge Park came into being because they didn't have enough spaces as it is. They have 123 spaces where they had to get a variance because that is not enough. Mr. Verantino will tell you they have not had enough parking. They rarely have enough parking for their minimal requirements. So, to say that in an open area such as this, Motobikes Plus is going to be able to limit their customers to parking solely in front or along the side where the bay through the repair entrance cannot be guaranteed. They are going to be spilling over into parking spaces of Eldredge park. The fourth and last photograph provided to the Board shows the current site as it is and shows, hopefully, how close the parking spaces of Eldredge Park are to them. It is also important to note that currently, because of the fact that the property has been vacant for an extended period of time and because Eldredge Park is an office research area filled with professionals, one of the things that they have done to keep appearances up is they have actually paid to fix that property. They have had it landscaped, they have trees in the back and they don't know if those will come down. They have had it cut, seeded, watered and they have the trees taken care of there. There is no guarantee that the property will continue to look that nice if Motorbikes Plus is there.

Continuing with the diminution value, Attorney Ducharme mentioned that they have a noise concern. If it were simply limited to retail sales, that would be one thing, but that is not what they see in the application. They will have to start the motorbikes up.

That leads to another concern, where the granting of the requested variance will not be contrary or adverse to the public interest. The concern that they have is that there is no doubt that there will be some type of substantial increase in traffic. Customers would take bicycles out and people will take motorcycles out to test them to make sure the repairs work. Previously, you just had a bicycle, not a motorcycle, that used the parking lot of Eldredge Park. Remember that Eldredge Park is closed on weekends. The retail store will be open on weekends and that is when they will do most of their sales. There are going to be customers there and if they want to try out a motorbike that is for sale they will have a couple of options. They can go out onto Bartlett Street, cross under the tressel and cross onto Islington Street, they can go right up and down Cate Street or they can take them out into the parking lot of Eldredge Park. That is a concern. There is a liability concern. It is not in the public interest to have a motorcycle place using someone else's parking lot. This would increase the insurance at Eldredge park because they are going to have to take out more insurance in case some one gets hit, as almost happened with a bicyclist when he came around the back of the building while someone was driving into one of the two front entrances. Motorbikes will be noisier so someone may hear them coming around the corner but the bad news is that they are noisier. The further bad news is that it is not their parking lot. Attorney Ducharme did not mean to intend or imply that they would tell people to use the parking lot. But, if you have a motorbike and you are testing it, once you are on the motorbike, whatever they told you, you are going to go wherever you want. They can't guarantee that it's not going to happen in the Eldredge Park parking lot. It happened in the past with the bicycles and it will happen again with the motorbikes. Attorney Ducharme stated that they do, in fact, believe there will be an increase in traffic. There may very well be an increase in police.

It is not true that a denial of the variance would result in an unnecessary hardship. If anything, the hardship would be to the people of Eldredge Park.. This is not an existing business at that site that is asking for a variance. Since it has been vacant, they have the choice of coming in here. It is understood that the owner is different than the applicant. The owners are the Mullaveys. They can rent it out to a variety of tenants. It would be a great place for a small law firm. Someplace where 2 or 3 or 4 employees are going to be there. It would also be great for a real estate office. You can't have a business that is expanding, as is Motorbikes Plus, who wants more space yet they are going to a smaller lot with a bigger building. This does not fit in with this location. The hardship is this particular place. It may be a hardship against the owner because they need this tenant but they are not a tenant there yet and it's not an undue hardship because they can rent to other people. We haven't seen anything to show that they have been approached by 30 or 40 other businesses and everyone has said no, they can't go into an office research place. The burden is on the applicant and they have not met that burden. Part of the test of hardship under the current laws says that a person must show that zoning restrictions as applied to the property may interfere with the reasonable use of the property considering a unique setting of the property in its environment. What is unique about it is that it is set up currently for office research. It is quiet, it is small, and it is enveloped by a larger building. It's quiet all around there. That is what makes it unique for quiet businesses. It is not a unique setting for repair business that cannot help but be noisy. The owner can always rent to others but he has chosen not to at this point.

Attorney Ducharme does not know if a lease has been signed, conditioned upon approval, but they should not be given credit for that because you cannot create a hardship under the law and use that as an excuse. The fact is that other businesses have been utilized in that district, in Eldredge Park itself, as office research, architects, engineers, and insurance.

Moving on to criteria #4, substantial justice would only be done by denying this variance, for the reasons that have been mentioned. Substantial injustice is that there is one business moving in that is going to effect eleven businesses that are in Eldredge Park.

Granting of the variance has to show that it will not be contrary to the spirit and intent of the ordinance and this is the crux of the entire matter. This is the hurdle over which Attorney Ducharme believes they cannot leap. To grant the variance is to say that the crux of the ordinance is not to the benefit of office research, not for the benefit of professional development, not for the benefit for that which it has been zoned for years, not for the comfort for those who move into such a zone area knowing that it is zoned that way.

Attorney Ducharme does not feel that any of the five criteria have been met. At this point the variance should be denied.

Vice-chairman Leblanc asked if the auto repair business on the corner of Bartlett and Cate cause you any difficulties?

Attorney Ducharme stated that it has not because it is a little further away and there is a fence that buffers it and motorcycle engines are different than car engines as they are less loud. The auto repair business was grandfathered as of 1995 and the business has been there for at least 15 years. That is why it is allowed in that district.

Mr. Horrigan wanted to clarify whether Mr. Ducharme indicated that the landscaping to the rear of the building goes with this lot or is it part of Eldredge Park?

Attorney Ducharme indicated that it is part of this lot however it has been vacant for some time and in order to keep up the property values and make it look nice, Eldredge Park has been paying for the landscaping

Attorney Pelech spoke again. He indicated that he was glad that Eldredge Park was such a good neighbor and that they took care of the landscaping. But, what they didn't tell you is that their parking spaces are on the Cate Street property and that is part of the arrangement that these former good neighbors had with one another. Eldredge Parking is partially on this lot and the parking that is on this lot has the use of Eldredge Park parking access way to get to their parking. Behind this building is parking that is utilized by Eldredge Park that is partially on this lot. Taking a look, briefly, at the map that Attorney Pelech previously submitted to the Board which shows the office research development, starting at Bartlett Street, continuing over to Cate Street, from Morning Street down to the railroad tracks. In that entire office research zone, there is one office research use. One and one only, and that is Eldredge Park. Attorney Pelech began with the auto repair shop that is lot 1 on the tax map. Lot 3 is a multi-family dwelling unit. The big lot that is the old cleaners is still an industrial cleaner that goes from Bartlett Street all the way back. Then we have Badger Rand that is now rented to, he believes, P.K. Brown and Anderson Nigrelli. They are construction people. Then, Lot 33 is another residential use. One thing that Simplex v. Town of Newington says is that any zoned district must be reflective of its use. That was one of the reasons that the Supreme Court returned the decision of the Town of Newington in the Simplex case in that the zoned designation was not reflective in the uses that were within that zone. Here Attorney Pelech would submit that they have Eldredge Park complaining that this is going to be a terrible use and I am going to speak to the photographs in a second. I would submit that this use is not going to be any more erroneous than the automobile repair shop on the corner or the construction yard. Attorney Pelech feels that this is a very appropriate use and they have stipulated that there will be no storage of materials or motorbikes or anything else outside the building other than parking areas. If the tires have to go off-site then the tires will go off-site, plain and simple. They have stipulated that that can be a condition.

John Thompson, owner of Motorbikes Plus, addressed the photographs. Mr. Thompson wanted to address a few of the issues that had been brought up. He reiterated that there would be no outdoor storage whatsoever. The size of the building would allow them to keep everything inside. Concerning the tires that were brought up, the size of their current lot does sometimes afford them the luxury of letting them stockpile a little bit in

higher quantities than need be but they will rectify that situation. They will remove them more frequently or store them off-site. In reference to the noise of the machines relative to the repair part of the business, that portion of their business is only 25 to 30% of the business that they do. The larger portion comes from retail sales. The backbone of their business is the sale of clothing, gloves, accessories and things like that. The few machines that they do sell, they do not provide test rides for their customers due to the insurance liability, etc. With regards to the landscaping, the outside appearance of the building would not go down in anyway. The landscaping would stay in tact and if anything they are planning to make slight improvements. The building needs a coat of paint and the front driveway has cracks and has weeds growing up into it and they will take care of all of those issues. With regards to the parking concerns, alot of their customers do ride motorcycles so they do require less space

Mr. Horrigan stated that Attorney Pelech indicated that there would be no overnight storage of motorbikes or materials. Does that imply that there would be daytime storage outside?

Mr. Thompson confirmed that there would be no outside storage. Even at their current location they do not store anything outside overnight. During the daytime there would be no outdoor storage either. The size of the building that he is hoping to move into affords them the luxury of being able to keep everything inside. They waste a great deal of time pushing them outside and pushing them back inside. They would like to keep it all under one roof and use the parking for customers.

Vice-Chairman Leblanc asked about the issue of the trailer in the back of the building. What is in there and if they move into the new place would all that stuff go inside?

Mr. Thompson said absolutely, everything that is in the trailer would go inside. Primarily what is in the trailer right now is rolling apparel displays, tire racks and such that they are unable to use right now because they don't have the space. They have been stockpiled and pushed into that trailer but they would all be utilized and put directly inside the new building.

Mr. Marchewka couldn't remember where the access to the service area would be from the exterior, from what side of the building?

Mr. Thompson indicated that facing the building it would be from the lefthand side. There is an overhead door just past parking space #1. It's a garage door. Pictures were provided. There is nothing in the rear.

Mr. Horrigan said there was reference made to a rear door being opened in hot weather?

Mr. Thompson indicated that he believed they were referencing the side overhead door that would sort of open to the rear section of the building. Facing the building it is on the lefthand side, which really faces away from Eldredge Park. That brings up another point that he wanted to address. The repair business, being a very small part of their business, is probably 25 - 30%, the repairs are performed without the machines running. Throughout an 8 hour day they would be open for a very, very small portion of the day that anybody could be bothered and they try to be very accommodating by trying not to rev up the engines. Proof or a guarantee was not given but they would be very happy to work with the neighbors to try to enforce the parking situation with their lots and outside storage concerns. We would be happy to put anything in writing to accommodate them.

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

### **DECISION OF THE BOARD**

Vice-Chairman Leblanc moved that the Petition be granted as presented and advertised. Mr. Holloway seconded. Vice-Chairman Leblanc indicated that the Board had heard from both sides quite extensively and he felt that the applicant has shown that they are suited for this area, that they can in fact work there without undue interference with the Eldredge building that is in back of it. This is a very tiny lot and it will allow the applicant to keep all of their materials inside. There will be nothing on the outside and he feels that is a definite benefit to the applicant and to the rest of the residents who live in this area. Regarding the variance for parking. Vice-Chairman Leblanc believes that they have enough spaces to accommodate their clientele with the 9 spaces that they would have on this property and he feels that we can grant the variance. Mr. Holloway agreed with Mr. Leblanc but he is a little bit concerned about the noise. As Attorney Ducharme

stated, a motorcycle does make a higher pitch than an automobile, but he felt they could hold them to the noise level if necessary. He supports the motion.

Mr. Jousse indicated that he supported the motion. He thinks it is a case where the Simplex case applies for this is an office research zone, the neighbors on each side of the property are not office research, as a matter of fact, most of the tenants or businesses in that particular zone are not office research. The previous owner was a repair and retail facility. On those grounds, Mr. Jousse supports the motion.

Mr. Horrigan asked Vice-Chairman Leblanc and Mr. Holloway if they would consider some stipulations: no outside servicing of any machine that comes into the operation and that there be no outdoor storage of either product or refuge from the operation. Mr. Horrigan also wanted to add a third stipulation but was unsure how to state it and asked Ms. Tillman for her help. He was concerned about the ambiguity surrounding the landscaping to the rear which is the current buffer for the Eldredge Park people and he would like to stipulate that the landscaping to the rear of the building be maintained or developed in consultation with the Eldredge Park owners.

It was suggested that the third stipulation be that the landscaping be maintained in its current condition.

Vice-Chairman Leblanc and Mr. Holloway were both agreeable to the 3 stipulations.

Mr. Marchewka indicated that he had gone back and forth on this petition and, prior to hearing the dissenting opinion, he was inclined to grant because the abutting properties are similar in nature, especially the auto repair and sales facility and in light of the Simplex case that that is a good case for this property. Also, it is a very similar use to what was there, granted they were bicycles last time and these are 2 wheel motorcycles with engines. Hearing from the Eldredge Park people, they stated that noise was an issue and riding through the parking lot was an issue. Then we heard from the applicants, who indicated that noise is a small part of their operation in terms of testing motorcycles and that they don't test drive motorcycles so there would not be any driving any motorcycles through the parking lot and that the only opening is to the left of the property and does not face Eldredge Park. The people in Eldredge Park supposedly could hear it if they were outdoors but that's a modern building, the windows don't open assuming that have AC systems that are on and probably radiate noise from the exterior anyway, so for all of those reasons, he will vote to grant.

The motion to grant with stipulations passed with a 6 - 1 vote, with Mr. Witham voting in the negative.



**5 minute break taken.**

Meeting was reconvened.



**6) Petition of 505 Lafayette Road, LLC, owner,** for property located at 605 Lafayette Road wherein the following are requested for a 1,500 sf two story addition to the rear of the existing building (as well as a 2,500 sf second floor addition to the existing building): 1) a Variance from Article III, Section 10-301(A)(8) to allow a 79' front yard where 105' is the minimum required, and 2) a Variance from Article IV, Section 10-401(A)(2)(c) to allow the expansion of the nonconforming building. Said property is shown on Assessor Plan 229 as Lot 9 and lies within the General Business district. Case # 10-4.

**SPEAKING IN FAVOR OF THE PETITION**

Attorney Bernard Pelech spoke on behalf of 505 Lafayette Road, LLC, owner, for property that is located at 605 Lafayette Road, for property that was formally a bank many years ago and when that closed it became a bagel shop and after the bagel shop closed it has been vacant ever since. What is being proposed for this lot is an addition to the rear of the structure. The hardship here is that the existing building is actually only 29' from Lafayette Road. Nothing is being proposed for the front of the building. The addition is to the rear and to the second floor. Because the building is non-conforming, being 29' from Lafayette Road, the first variance required is a variance for a non-conforming use. The second variance that is required is for an addition to the rear because the corner of the addition to the rear is only 79' from Lafayette Road where 105' is required.

Attorney Pelech indicated that the building pre-dates the 105' setback from Lafayette. There is a hardship if anyone wants to do anything with this building as it is going to require a variance because the building is non-conforming. Whether you expand the side, front or rear, a variance will be required. Everything else meets the building requirements. The second floor is not encroaching upon the front yard setback any more than the existing building is. They believe that in this case there is no fair and substantial relationship between the purpose of the zoning ordinance, which is to prohibit further encroachment to the setback. A 79' setback is more than adequate as most of the buildings along Lafayette Road don't comply with the 105' setback other than the mall next door. There really is a fair and substantial relationship for the ordinance. When you apply it to a small lot, such as this, which is located directly on Lafayette Road, if you comply with the 105' setback and moved everything back you would have a big front yard without much room for the building in the rear of the lot. Finally, no private or public rights will be violated by the granting of this variance. They do not think that the granting of the variance is going to result in any diminution of value to any properties. Attorney Pelech categorizes this site at the present time as an asphalt wasteland. This is going to have to go through Site Review and hopefully there will be some beautification of the area. With the addition of a 2<sup>nd</sup> story as well as the rear addition will beautify the area. The parking area is pretty much unkept at the present time and it is going to be re-stripped and coated and the landscaping is certainly going to improve the aesthetics. Surrounding uses obviously are a mixture of predominately retail and this certainly is in keeping with or will enhance the area.

The third criteria is whether substantial justice will be done by granting the variance. This is going to not only reuse this existing building but it will add to it and enhance the tax base for the city and will also improve that area aesthetically. Substantial justice will be done because there is no benefit in denying the variance. The public is going to be benefited by granting the variance and therefore the hardship on the owner will be outweighed by the benefit to the public in denying the variance. This is not going to be contrary to the spirit or intent of the ordinance. When the ordinance indicates that you can't expand non-conforming structures, Attorney Pelech does not believe they intended that. They are expanding to the rear rather than to the non-conforming portion of the structure. If that had a 29' setback, which they have, and they wanted to add a foot to the front, then you have violated the spirit and intent of the ordinance. But, they have a 29' setback and the addition is 79' back from the road and in no way are they expanding the non-conforming portion of the structure. Finally, the public interest will be benefited. The site is going to look better, it's going to provide some useable office space for the applicant, it is going to take a tired building and refurbish it and improve it greatly. Jennifer Watson, from Millette, Sprague and Coldwell, the engineer for the site was available for questions. Also, a representative of 505 Lafayette Road was present.

Vice-chairman Leblanc asked what was going into the building?

Attorney Pelech responded that he believed the use would be professional offices and, although there's no tenant for the second part of it, possibly some type of food use.

Vice-chairman Leblanc asked if there was plenty of parking and Attorney Pelech responded that the plan is now for proposed professional office space of 6,000 square feet and proposed restaurant take-out 2,000 square feet. One requires 30 spaces and the other 20 spaces, for a total of 50 spaces and there are 52 on site.

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

**DECISION OF THE BOARD**

Vice-chairman Leblanc made a motion to grant the petition as presented and advertised. Mr. Horrigan seconded. Vice-chairman Leblanc stated that, where the addition is going onto the back of the building and that is the part that encroaches on the setback, he is perfectly justified in granting a variance. The fact that the whole building is within the 105' setback from Lafayette Road making it non-conforming and therefore the hardship lies with where the building is situated on the lot and the other criteria have been met and should be granted. Mr. Horrigan agrees with Vice-chairman Leblanc.

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





7) **Request by J.A.S.K. Realty Trust, owner**, for property located at 114 Gosling Road to amend previous approvals to allow for the parking and storage of Ryder Trucks and trailers, car carriers and/or tow dollies within 100' of the rear property line. Said property is shown on Assessor Plan 215 as Lot 3 and lies within the Office Research district. Case # 10-5

Attorney John Lyons spoke on behalf of the petitioner, JASK Realty Trust. Their tenant, Ryder Trucks, was also present, represented by Attorney Sanford Roberts. This property, in 1990, was granted a special exception and part of that special exception set up a 40' buffer on the front of the property along the street line and a 100' buffer to the rear of the property. That was granted by this Board by an unanimous vote. In January of 1999, JASK was before the Board, requesting a variance to service and park Coast buses within that 100' setback. The request was also made at that time, as part of that variance, to change the hours of operation so that the Coast buses could be parked and serviced on weekdays from 5:45 a.m. to 11:15 p.m. and on Saturdays from 6:15 a.m. to 11:15 p.m. That variance was granted in 1999. They are not asking for anything beyond what has already been given to them. In fact the request that is before the Board is a less intensive use. The Coast buses are not parked and serviced in that area. What they are asking to be able to do is park trucks. Ryder will talk about that in more detail. Additionally, the hours of operation will be the original hours of operation approved in the initial special exception which will be 7:00 a.m. on weekdays to 11:00 p.m. and 7:30 a.m. on Saturdays. The interesting thing about their request is that if they were before the Board today there would not be need for the 100' setback. Article XII, Section 10-1201(A)(3)(f) says "All industrial districts and the overlay district office research component: 1) Off-street parking spaces and accessways shall be located no closer that 100' to any adjoining residential or mixed residential district and shall be screened in accord with Article V." Attorney Lyons stated that they exceed the screening requirement. With the packet that was provided to the Board was a photograph of the fence, and he hoped that some of the Board members were able to go out and look at the property. Attorney Lyons indicated that Ryder is running a first class operation. It is clean, efficient and they have a fence that far exceeds the screening requirement. The property to the back of Ryder, where the trailer park is located, is also zoned office research. It is not zoned residential or mixed residential. The ordinance is very careful with the words that were used in how the ordinance was drafted and constructed, specifically, Section 10-305, which deals with all of the various industrial districts, and look at Section B-3, it says this: No structures or additions to structures shall be located within 100' of property used or zoned residentially. So, it makes a specific reference to both use and district. The section that would alleviate their requirement for the 100' buffer in the back for parking does not speak about this but only indicates that that requirement is necessary if in fact you abut a residential or mixed residential district. So, the question arises, if a condition was made part of their approval as a special exception and that condition is no longer required under the present ordinance, where are they and what does it mean. They are in front of the Board because it is the appropriate thing to do and to ask for relief that the 100' setback no longer be part of what was originally required of the operation. They have a 10' plus fence in the back, there is a 17' green area which will then provide a buffer, they are not going to service or run trucks in that area. They will be parked along the back of the property, up to the green space and they will simply sit there until they are moved into the facility to be repaired, which is a 5-bay garage. Other than the trucks running to be pulled in and turned on to pull out, trucks will not run in that area and they are glad to make that as part of anything that the Board may do for them that evening. Those trucks, when they are parked along the back of that property will provide an additional sound buffer and that is a benefit to everyone. There will be less noise, not more. Obviously, it allows the Ryder facility to run much more efficiently and there is 100' back there that is not being used for anything. There are two major safety issues that are involved. One is a safety issue that runs specifically to Ryder employees and being able to park the trucks in a safer and more efficient environment but the other main issue that would have some impact on the Board's decision is the 40' buffer that is in the front of the property. There have been some problems out there and Mr. Page has been out there. What happens is when folks drop their trucks off after hours and on weekends, they tend to park the vehicles in the front 40' buffer because there is no room to park behind the area because they can't use the 100' in the back of the property. There is also Atlantic Gymnastics who is the abutter to the left and they have cars parked all over the place down there. If JASK gets relief from the 100' setback, it will allow them to move trucks to the back. Attorney Lyons distributed pictures to the Board, showing what they intend to do. The photographs show that they have created a sign indicating that parking must be behind the yellow line and the progression of photos shows that they get a wider and

wider shot until he is actually across the street and that sign is now sitting on a solid yellow line that runs from the corner of the building all the way over to the extra property. That setback is actually 57'.

They want to be good neighbors and they went to all of the neighbors in the trailer park and presented the petition that is also part of the package. The property is owned by a gentleman by the name of Bill Ashley who has no objection to what they are asking for, although he does not live there. There are 41 lots which are in a circle and there are in essence three rows, one on each side and one in the middle. Of 41 lots they had 20 signatures that support what they are doing. Attorney Lyons was out there himself, and 12 people said they had no objection to what was being requested but they did not like to sign petitions. In fact, Attorney Lyons was personally told on at least 4 occasions, "Oh, we never hear from them. They are very good neighbors". So, of the 41 lots, 32 of the neighbors have no objection to what they are doing. 8 folks did not answer and there was one lady who indicated that she may come to the meeting to speak, who lives a 103. Of the 11 lots that actually abut the property, who are in their backyard, 6 signed in support, 2 said they had no objection but didn't want to sign a petition. So, of the 11 trailer lots that actually abut the property, 8 of the people had no objection. 2 folks there was no answer, some people go to Florida that live in there. So, they are asking, as the Petition indicates, for relief from the condition of the 100' setback in the back of the property that they would submit, is no longer a requirement of the present zoning ordinance.

Vice-chairman Leblanc requested clarification about whether the buses are no longer using the lot?

Attorney Lyons responded that this was correct. They have not repaired Coast buses for some time.

Vice-chairman Leblanc asked if the fence that they took a picture of was on the property line?

Attorney Lyons indicated that it was just on their side of the property. It is 17' from the edge of the fence to the curbing, which is green space.

Attorney Sanford Roberts spoke on behalf of his client, Ryder Truck. Attorney Roberts indicated that he felt Attorney Lyons had done an excellent job and he was not going to speak other than to say that, when they first started talking about this, they asked themselves if they even had to come back to the Board at all because the zoning doesn't require a 100' buffer any longer and they came to the conclusion that the most appropriate approach was to come back to the Board because a variance had been previously granted for something much more substantial than what they are asking for now. The second thing that they told Ryder is that they must go and talk to all of the residents of the park. It's not enough to send them a notice and hope that they don't show up. Attorney Roberts feels that the indication is that the residents of the park consider them a good neighbor and they hope to continue to be one.

Mr. Horrigan stated that they were coming in with two arguments. One is that they are no longer subject to the 100' buffer zone, where it is obvious that they are right next door to a fairly large residential area. So, what is it that they want?

Vice-chairman Leblanc stated that, in their 1999 dealing with this property, they had a stipulation that no refrigeration trucks were permitted. Does Ryder have refrigerator trucks that will be parked in this area?

Attorney Roberts indicated that yes, they do.

Vice-chairman Leblanc asked if the refrigeration units would be running?

Attorney Roberts indicated that no, they would not.

Vice-chairman Leblanc asked if Attorney Roberts was representing that there would not be any refrigeration units running in this area over night or while they are waiting to be serviced or whatever would have to be done to them. He feels that would be a huge infringement upon the neighbors in the back to have those things running all night.

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

### **DECISION OF THE BOARD**

Vice-chairman Leblanc moved that the Petition be granted as presented and advertised, with the stipulation that there be no refrigeration trucks left running in the 100' area in the back of the property. Mr. Holloway seconded. Vice-chairman Leblanc stated that since the stipulation had been dropped from the ordinance they

can in fact grant this particular petition and it clears up the fact that they had the stipulations on before and they are just dropping them now. Mr. Holloway stated that he agrees with Vice-chairman Leblanc and added that the Petitioner did take advantage of getting to know the neighbors and letting them know that they were doing.

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

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**8) Petition of Peter S. Fernald and Susan G. Kanor, owners**, for property located at 77 Elwyn Avenue wherein the following are requested: 1) a Variance from Article II, Section 10-206(12) to allow a Home Occupation II for a counseling office (8AM to 8PM two days per week) having 438 sf where the maximum allowed is 300 sf and where the hours of operation shall not exceed 8AM to 5PM Monday thru Friday, and 2) a Variance from Article XII, Section 10-1204 Table 15 to allow no parking to be provided for the Home Occupation II where where 2 parking spaces are required in addition to the 2 parking spaces required for the single family dwelling. Said property is shown on Assessor Plan 113 as Lot 33 and lies within the General Residence A district. Case # 10-7

Mr. Horrigan stepped down from this hearing.

Peter Fernald, of 77 Elwyn Avenue, spoke on behalf of himself and his partner, Susan Kanor. They are requesting a variance so that they can have a home office. He wanted to make a correction that he believed was a typo relative to the first variance. On the 3<sup>rd</sup> floor plan, on page 2, it shows that they are requesting a variance for 325 square feet and in the statement that the Chairman just read it said 438 square feet, so he clarified that they are actually requesting 325 square feet.

Ms. Tillman stated that she could clarify the square footage. There was a question because the building permit application listed 438 but the plan listed 325 so she erred in the higher figure for advertising purposes, as she hadn't heard from Mr. Fernald.

Mr. Fernald stated that the office use will only be for 2 days a week because he is full time at the University and Susan has a practice in Boston and she would like to work one day a week at home so that she is not travelling as much. Their clients are professionals and students. Mr. Fernald would work one day a week in the office and Ms. Kanor would work the other day. They only see one person at a time so only one car would be parked outside at a time. The office is up in the attic and it is hard to describe but there isn't much room up there, when you have four slanted roofs on a victorian, so they need a little extra space to have a reasonable size and it still won't be as much space as they would like.

With regard to the parking spaces, they have a corner lot. For them to put in 2 parking spaces, it would really be an eyesore for the neighborhood. It would be least inconvenient and almost no hardship to anyone to have one car parked there two days a week.

Vice-Chairman Leblanc asked what days of the week would the operation be going?

Mr. Fernald indicated that it would be Tuesday and Wednesdays.

Vice-chairman Leblanc asked if he was planning on putting up any signage?

Mr. Fernald indicated that he would not be putting up any signage.

Mr. Marchewka asked if there was a garage and did they park in it?

Mr. Fernald indicated that there is a garage there but it is no longer a garage. Mr. Fernald wasn't quite sure what to call it now - it's not a shed, it's not an office, but it was changed by a previous owner. In fact the previous owner was on the Board. They can park 2 cars in the driveway but not in the garage.

**SPEAKING IN OPPOSITION OF THE PETITION**

Mike Fracher, of 55 Elwyn Avenue, spoke in opposition. He stated that he was a resident of the neighborhood for 30 years. He indicated that the Fernalds are very quiet neighbors and they don't advertise. He didn't even know what they did or their names until he saw the petition for the variance. Mr. Fracher has a major concern about parking. Mr. Fernald mentioned that there would only be one car there because there would only be one session at a time. Well, there is going to be an overlap in sessions and he can think of

circumstances where someone is going to want to come to a session, a support person may want to come to a session and they would have more than one car. The Elwyn Avenue parking situation is a problem due to the way those houses are constructed. Back in those days they didn't allow for much parking. The area is a residential area that was not intended to be used for business. He believes that is the intent of the zone that they live in and to make any variance away from that - he's not sure exactly what the Board can do just because of the 300 foot-thing, he's not sure why they allow that in a residential area - but if they do allow it, that's okay, but his main concern would be the parking. He suspects that their operation would be quiet and not offensive or anything like that, it's just the use of parking that is a concern.

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

**DECISION OF THE BOARD**

Vice-chairman Leblanc moved to grant the petition as presented and advertised, with the stipulation that the hours of operation are between 8:00 a.m. - 8:00 p.m. on Tuesday and Wednesday, and that the space being granted relief is 325 square feet. Mr. Jousse seconded. Vice-chairman Leblanc stated that, as long as there is no signage and this is not going to create any traffic jams in the area, he felt the Board could allow this petition. The amount that is being asked for in relief in square footage is very small. It's down to 25 square feet and that is an allowable amount being a minimal amount of relief. The hours of operation go beyond the 5:00, Monday thru Friday routine, but as both parties work out of town, the 8:00 a.m. to 8:00 p.m. is sufficient and they have presented to the Board that it is only going to be on Tuesdays and Wednesdays. Vice-chairman Leblanc feels this would be a very minimal impact on the neighborhood and, probably, won't even be noticed. Parking is always a very touchy issue in any area of the city but he drives by there frequently and he could always find a place to park at least one car in that general area. He does not see that there will be any safety or traffic hazards created by having another car there on Tuesdays and Wednesdays. Mr. Jousse had nothing to add to Vice-chairman Leblanc's statement.

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



**9) Petition of First Church of Christ Scientific, owner, and Stephen Kelm, applicant,** for property located at 272 Rockland Street wherein the following are requested: 1) a Variance from Article II, Section 10-206 to allow the existing church to be converted into four dwelling units having 2,460.25 sf of lot area per dwelling unit where 3,000 sf of lot area is required per dwelling unit, 2) a Variance from Article XII, Section 10-1201(A)(2) to allow a 16'7" travel way where 24' is the minimum required, and b) 8'5" x 19' parking spaces where 10' x 20' is required for parallel parking spaces; and, 3) a Variance from Article XII, Section 10-1201(A)(3)(a)(4) to allow the six parking spaces to back out onto the street where such use is not allowed. Said property is shown on Assessor Plan 129 as Lot 8 and lies within the General Residence A district. Case # 10-8

**SPEAKING IN FAVOR OF THE PETITION:**

Stephen Kelm, applicant, stated that this property is currently operating as a church and what he is proposing is to develop residential units within the existing building. Based on the size and volume of the footprint of the building, it could support 6, 7 or 8 residential units. The parking requirement for the lot wouldn't support it and it doesn't really practically support it based on four units the way the zoning is written. The zoning would allow 3 units and he is asking for 4 units. The units would be rather large with the 4 units, with 3 units it wouldn't be practical. The neighborhood is a residential neighborhood and he feels the use would fit in fine with the local properties. The parking does not meet several of the zoning requirements but as shown in the site plan, it would be better than as it currently exists. He believes that in 3 spaces you can reasonably turn around and drive out and pull straight out. The other spaces that are running along the access drive most likely would be backing out into the street. The street is not a main street and he does not feel that there is a lot of traffic. The use would be less intensive than the use that is currently being used as a church. It is his understanding that there are approximately 15 -20 cars there a couple of days per week when the church is being utilized.

Sanford Roberts, who lives one block from the property, stated that he was not speaking in favor but asked if there was a site plan that he could look at.

**SPEAKING IN OPPOSITION OF THE PETITION**

Rebecca Schultz of 293 Rockland Street stated that she lives across the street from the Christian Science Church. She has quite a few problems with the proposal. First, they would be going from a zero residence when the cars are only there on Sunday for about an hour to parking for four families. This is a very narrow street. The Church is also right across from the Portsmouth Apartments. There is substantial traffic going into and out of the Portsmouth Apartments with the senior citizens and the people who live there with the buses, and so forth, taking them shopping, it is pretty hard to back out onto Rockland Street. Quite a few children use the street to walk back and forth to school. She doesn't think it's a good idea for cars to be allowed to back out in that case. The house directly next door to the Church and the fellow who lives there is out of town and otherwise she is sure he would be at the meeting. There is only about 3' between the Church's driveway and his driveway. It's practically just big enough for a flower garden. She would think that the quality of life on the street would change dramatically with the addition of 4 dwelling units where before there were none. Especially with the limited parking that's available and the increase of people who would then be using that one space that is currently only used on Sunday for about an hour.

Nancy Pollock, of 300 Rockland Street, two doors down from the Church, also spoke. She wanted to say that she supports a residential use for the Church. Where she lives, on the side going towards Broad Street, on both sides of the street are single family residences so it's not multi-use but there is the Portsmouth Apartments building. She is concerned about the number of units and especially variances 2 and 3 concerning parking. A variance to squeeze 6 cars into a narrow driveway and from the plan that she saw, they will be lined up all the way down from the sidewalk, and there's no buffer from their driveway to the driveway of the neighbor. The parked cars would all be visible coming down the street. Her main concern is the safety and that is with regard to variance #3 which requests that cars be allowed to back out onto the street. This is a street with lots of trees, there are very limited views as it is and with the addition of 4 units this would generate not only the cars that are parking but much more on street parking. Her concern is the danger on what is a main walkway for kids going to school five days a week. Also for kids who are biking, skateboarding, etc. She is concerned about the safety because it is already difficult the way it is for kids. The Church as it is really has been a wonderful neighbor and there has been very little impact from church parking. There are a few cars after Sunday service but it would not be the same as the impact of this development. Parking is impacted when there are funerals as the funeral home is right around the corner on Broad Street and they end up parking all the way down Rockland to Miller as it is. Her main point is that the 4 units on the site are too many. She feels that, as her other neighbor said, they are requesting to go to 4 families which can be 6 cars in the drive plus many more on the street for the residents and guests of the residents. This will have a significant impact on the neighborhood and she doesn't think it would be good for her neighborhood. She believes fewer units would be far better.

Sanford Roberts, of 208 Highland Street, stated that he has no objection to residential use in this neighborhood as it is a residential neighborhood. He does not live on Rockland Street, but lives around the corner, and he doesn't have a problem with what's going in there. There is a condominium right next door to it on the side closest to Middle Street. He has, unfortunately, some personal experience with backing out of driveways. Six months ago he backed out of his driveway into a van that was coming up the street and he also knows, as Nancy indicated, that there are a substantial number of junior high school students who walk down Rockland Street and backing out of that driveway could be a serious issue. If there is anyway that they could modify that, but otherwise that is a serious problem.

Mr. Kelm spoke in rebuttal. The street allows on street parking so it is a fairly wide street. The houses on either side of the property have the same problem where they have to back out into the street. As far as the number of cars, typically, he has converted property in Portsmouth and 90% of the properties have been sold to single individuals. He feels that there would be six cars there at the most, and there could very likely be 4 cars. He does not feel that there is going to be a huge amount of traffic and he does not feel that there will be any more burden than what has been utilized by the property. He knows they use it on Wednesdays and Sundays but is not sure in between those dates. Right now, three of the parking spaces that you turn within the area and back out and the others could be set up to do it but he tends to say they wouldn't. An alternative would be to turn the front of the building into a parking lot and he doesn't think he would want to do that to the neighborhood. You could have the cars come in, turn left and then back out and pull off into the street but for aesthetics he doesn't know if it's the correct thing to do.

Vice-chairman Leblanc stated that Mr. Kelm has presented the Board with plans that show just Units 1, 2, 3, and 4. What sort of configuration will these units have?

Mr. Kelm stated that they will be 2-bedroom units.

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

**DECISION OF THE BOARD**

Mr. Horrigan moved to deny the petition as advertised and presented. Mr. Leblanc seconded. Mr. Horrigan stated that there were three variances in front of the Board. The variances on the travel way and the parking spaces derive from the first petition that asks for an additional dwelling unit beyond the minimal standards of 3,000 square feet of lot area per dwelling. Mr. Horrigan feels the crucial variance is the first one and he has heard no argument here as to why it would be a hardship for this particular property if it were a single dwelling or a duplex or a triple-residence dwelling if the applicant wanted to take full advantage of the existing requirements of the ordinance. Failing to think of any reason why it would be a hardship to be denied a fourth unit, he simply feels that there is no justifiable reason for granting the petition. The zoning code allows this applicant and the property owner a reasonable use of the property for residential purposes and the reason for the minimal square foot requirements, in part, are related to controlling density of these neighborhoods. So, there definitely is a fair and substantial relationship between the general purposes of the zoning ordinance and this specific dimension requirement. There was some testimony from abutters who feel that the increased density might interfere with their private rights in their own residences. Mr. Horrigan sees no reason to grant the first variance and then the variances two and three become irrelevant. Mr. Leblanc agrees with Mr. Horrigan's analysis and thinks that this is an over-intensification of this particular lot. It is too bad that the building is as large as it is on the property but those are the facts of the situation and we have to live with them. The other thing that Mr. Leblanc feels is a serious problem is the parking and backing out into the street. When you have four units with 2 bedrooms he'd be willing to bet that there would be four units in the building that would have a least 2 cars living at or using the property and this creates a real burden on the street as it's not that wide of a street. It's wider than Broadway but it's still a narrow street and for safety reasons, having cars back out into the street is not a good idea and if somebody is in the process of converting this property they might as well as have cars drive out into the street rather than back out. He just thinks it's an over-intensification of the use and shouldn't be granted.

Motion to deny the petition passed with a 6 - 1 vote.

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Motion to continue after 10:00 p.m. was made and seconded and passed unanimously. For the general public, that simply means the Board is going to continue tonight rather than coming back next week. The Board would ask future speakers keep in mind the lateness of the hour and try to keep to the point and not be repetitive.

.....  
**10) Petition of New England Industrial Properties, owner,** for property located at 2179 Lafayette Road wherein a Variance from Article III, Section 10-304(C)(2) is requested to allow a 25' x 40' one story addition to the rear of the existing building 85' from property zoned residentially where 100' is the minimum required. Said property is shown on Assessor Plan 268 as Lot 98 and lies within the General Business district. Case # 10-9

**SPEAKING IN FAVOR OF THE PETITION**

Jim Brochu, representing VIP, which is New England Industrial Properties, doing business at 2179 Lafayette Road, stated that they recently added 2 bays to the building. They used a temporary container to hold tires while they were doing renovations. Since the renovations were completed, they did not have room for all of the tires. They have had to remove tires from the site until they were able to come to tonight's meeting. The addition that they are asking to build tonight is 25' X 40' which would allow them to put 500+ tires in. It would also allow them to put all of the tire casings in it, which are now sitting outside.

Mr. Marchewka asked if outdoor storage was allowed at this location?

Ms. Tillman responded that outdoor storage would not be allowed and to use a trailer for storage would also be a variance coming to this Board and, in talking to the applicants, it was suggested that an addition to the building for storage would be far more acceptable than asking for a variance for a storage trailer on the site.

Mr. Marchewka asked where the tires were previously stored?

Mr. Brochu stated that they were inside of the store but prior to that they only had 3 service bays.

Mr. Marchewka clarified that after they added 2 more bays there was no room for storage?

Mr. Brochu stated that due to the fact that some of the space that they took for the new bays was previously storage space.

### **SPEAKING IN OPPOSITION OF THE PETITION**

Terry Mason of 2 Pheasant Lane, spoke indicating that she lives directly behind VIP in a residential area. They have had reasonable expectations of a green belt area between this business and their residential neighborhood. The loss of about 15' of trees would impact their expectation of privacy, the protection of their neighborhood and of noise. With the increase of the bays, they have already had a remarkable increase of noise with the squealing of cars when bays are left open while work is being done and with a lot of stereo noise. If the buffer is reduced by 15' or so it will substantially impact their development in terms of the noise and in terms of view. The noise is already a big problem especially because of the stereos, the engines revving and the tires squealing, they are worried about the tire storage being a fire hazard. During good weather there is more noise because the bays are kept open and the increased noise will impact the residents in the rear. They want a reasonable expectation of a green belt to block the view and sound from the businesses and Route 1 traffic. They have no idea whether or not they are going to be able to see woods or a pile of tires or more building or whether or not the expansion will increase their risk of fire. They don't want an increased chance of risk in any of those areas. They don't want a lessening of the green belt and they don't want the increased noise. Their original expectation was what they were told was to happen and it was a reasonable expectation. They bought the property considering that they would have the green belt and they want that expectation to remain. Otherwise, it gets less and less space between them and Route 1 traffic and everyone knows what that's doing, it's increasing. VIP is has not told their association of their plans, unlike Ryder, they did not come to them and ask what they thought of it or give them any insurance or explanation. They know that whatever they do will upset the neighborhood. She does not consider that as a very good neighbor policy and it gives her some trepidation that their fears will be realized and that they will have an increased risk of fire, definitely noise, and definitely less green belt. She asks that their original expectation of safety, noise protection and green belt be preserved. If the petition is granted, they ask that the Board considers these as possible solutions to their problems: 1. that the bays would be kept closed during work; 2) that the green belt be replaced on their side of the property so that they get a replacement of the trees and reasonable expectation of privacy, even if it is planted on their property; and 3) that they turn down the stereos, stop squealing tires and making unnecessary noise and keep the bays closed.

Chairman Blalock stated that they are already supposed to be adhering to the stipulations that there be no increase in the level of noise and if that is the case they are in violation of that and another one is that the overhead service bays be closed. So, they already have those stipulations and if they are not adhering to that then they are in violation and the board will not be able to grant them any relief.

Ms. Mason indicated that the bay doors are open and the noise has increased substantially since the new bays went in and all of the neighbors have commented on this.

Chairman Blalock suggested that she take these stipulations to her association so that they know there are some "teeth" in the last request that they actually got when they increased the bays. If they are in violation, you need to let the zoning code officer know, Jason Page of the Legal Department, and he will follow up on it.

Pamela Berry, of Pheasant Lane Association, spoke about the bays. She has driven by since she saw the petition for this meeting three times during normal business hours, the last being today at 4:00, and all of the bay doors have been open each time she has driven by.

Mr. Brochu stated that he was not aware that the doors were being left open and wished he had know this as he would have taken care of it. It's too late now, but in the future, he will make sure that the bay doors are closed. As far as the trees, they lost a number of trees with the plowing last winter and they will replace all of the trees that are missing that act as a buffer. He agreed that it certainly wasn't right that this should happen.

Mr. Marchewka asked if Mr. Brochu worked at the site?

Mr. Brochu indicated that he works in the home office but they have a supervisor who is supposed be on top of this.

Vice-chairman Leblanc asked if there were any loud speakers on the outside of the building? So, the complaints that the neighbors have, it sounds like it's coming from cars. Mr. Brochu says it is coming from kids that are either in that parking lot or whatever because their own employees do not squeal tires in that parking lot or, if they are, they shouldn't be working for them.

Ms. Berry indicated that she would not object. She was not able to attend the last meeting and she did not know that they had those requirements. If this is just for tire storage and they keep their bay doors closed, she has no objection at all.

Chairman Blalock clarified that this request tonight is really for eliminating 15' of the setback requirement from residentially zoned property, from 100' to 85', to allow them tire storage.

Ms. Berry indicated that that is probably in some ways a benefit to them to help buffer some of the noise. She doesn't have a problem with that. She does have a problem with the bays being open.

Ms. Mason stated that she would have a problem with it unless the trees are replaced on her side of the fence so there is a maintenance of the same amount of green belt because that is what keeps the noise down and keeps the view okay.

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

## **DECISION OF THE BOARD**

Vice-Chairman Leblanc moved that the petition be granted as presented and advertised with the stipulation that the previous stipulations be adhered to, that is the overhead bay doors be closed, which should reduce the noise level, and the second stipulation that any foliage or trees that are missing be replaced as a barrier.

Ms. Tillman asked if they could say that vegetation be placed on the condominium side in accordance with the condominium association's approval? The trees on the other side, the Pheasant Lane side.

Mr. Brochu indicated that they were going to do that anyway because they had been damaged from the plows last winter.

Ms. Tillman indicated that those trees were on his property but they were asking for additional trees to be planted on their property. The trees that were being taken down for the addition need to be replaced on their side of the fence and whatever plan is drawn up to do that should be approved by the condominium association as a whole so that they have a say in what gets planted on their property.

Chairman Blalock asked if that stipulation was acceptable to Vice-Chairman Leblanc, that the trees be replaced on the condominium side with the approval of the condominium association?

Vice-Chairman Leblanc agreed. Seconded by Mr. Witham for discussion.

Vice-chairman Leblanc indicated that what he felt the Board was looking at was a building that would be within 85' of the buffer zone that is needed for residential and commercial space and the building itself is not going to produce any noise. In fact, it would be a much better buffer than any trees because of its depth and what is going to be done with that addition, being just storage. There won't be any more noise generated. With the applicant's statement that they will take care of the vegetation to maintain the proper vegetative buffer, everybody will be happy with this. Mr. Witham indicated that he won't be supporting the motion. Mr. Witham feels that the buffer is one of the more important issues of zoning. As businesses grow, he's not saying they shouldn't be able to enlarge a building but this is a 1,000 square foot storage area whereas if they did something that met all of the requirements they could get 600 feet of storage. Yes, this addition may serve as a better buffer but we're not sure what this may become in the future. He thinks the site is what it is



and he doesn't see how the Board would be doing any benefit to the public by allowing it and it would be an injustice to the public.

Mr. Horrigan stated that he does not support the motion either. As he indicated earlier this evening he has a concern where commercial/industrial abuts a residential area and he thinks that buffer setbacks are extremely important. In this particular zone, 100 feet is a minimum and it is not a number to be negotiated. We are concentrating on the storage but the fact is that the variance is to enlarge the building. No insult to the current business but businesses do come and go and they have no idea how this addition would be used in the future but it does create some potential for further intrusions on the rear residential properties. Also, as stated by the abutters, the first abutter's argument, that the green belt on that portion of the property is very important, especially in terms of the noise levels and also for aesthetic reasons as well. He just simply cannot visualize how they could possibly replace the existing vegetation. It would be some years before the planting would have the same effect. In fact, he can't figure out how moving the trees around really deals with the problem that she raised. So, he doesn't see the hardship in this case. If they have storage problems, they would have to look for other solutions.

Mr. Machewka stated that he has a hard time supporting the motion. He stated that they try to deal with outside storage and this is a self-imposed hardship issue. When he was on the Board and a special exception was granted to allow the two service bays and he specifically remembers talking about noise and keeping the overhead bay doors closed and this obviously has not been done. Personally, had he known that granting a special exception to allow 2 additional service bays would create illegal outside storage, he believes he would have voted differently. In December of 1987 this Board voted to grant a special exception that stipulated no outside storage so the fact that they have outside storage now is illegal and he has a hard time granting a variance to correct something that was a self-imposed situation.

Mr. Jousse stated that he was going to mention the same thing as Mr. Machewka. If the hardship does exist, it is self-imposed. Whether it is through lack of planning or what, the storage of tires was inside the building before the Board granted a variance back in May and now there is "a hardship upon the storage of tires", it's self-imposed and not grounds for granting of the variance.

Motion to grant with stipulations was denied by a 2 - 5 vote.



**11) Petition of Brian P. Langton, owner,** for property located at 334 Coolidge Drive wherein a Variance from Article III, Section 10-302(A) is requested to allow a 16' x 36' two story garage and an 8' x 51' porch each with: a) a 22' front yard where 30' is the minimum required, and b) a 7' right side yard for the garage where 10' is the minimum required. Said property is shown on Assessor Plan 268 as Lot 18 and lies within the Single Residence B district. Case # 10-10

Brian Langton, before starting his presentation, asked about on his plot plan as there was a living room that was not mentioned in the abutter's notice. Ms. Tillman indicated that he met the setbacks for the living room.

Brian Langton, of 334 Coolidge Drive, stated that he lives in one of the older houses in Elwyn Park and the rooms in it are quite small and that is the reason why he wants to add the living room on to the other side of the house. The garage is a little bit of an odd size but the reason for that is there is a 4' stairwell on the side of the living room going to the second floor. Therefore it's off of the garage, which is basically a minimum size garage. If he brings the garage back to the front line, both trees would be cut down. On the second floor of the garage, there is a possible future master bedroom. As far as the windows on the second floor, they would be on the front and rear and not on the sides. The reason he would rather go out than up is because the house is actually built on 2x3's rather than 2x4's. He had a letter from his neighbor, to the right and he gave the letter to Chairman Blalock.

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

**DECISION OF THE BOARD**

Chairman Blalock stated that the abutter letter was written to endorse the request and indicated that they did not object to the variance being granted. It was signed by Sara and Jason of 316 Coolidge Drive.

Chairman Blalock passed the gavel to the Vice-Chairman and he made a motion to grant the request as presented and advertised. Mr. Horrigan seconded. Chairman Blalock stated that the request was just for dimensional relief and the applicant obviously wants to do some nice improvements to his home. Chairman Blalock feels that it is the older neighborhoods like Elwyn Park that you can't move the house and the applicant explained very logically why the garage should be moved forward a little bit. The idea of a farmer's porch, in this day and age, is something that Chairman Blalock would like to see more and more people do. Spending more time in the front of the house. It seems to Chairman Blalock that, although on paper it may seem like extreme relief, it really is quite minimal. For the minimal relief, it would be a huge improvement for this neighborhood. Mr. Horrigan stated that he agrees with Chairman Blalock entirely. One more farmer's porch would be a small addition to an increase in community and neighborliness. The house is on a very small, narrow lot and improvements, especially the garage which is in the public interest, is going to involve some side yard problem and the abutter on that side has indicated that they have no objection to the plan. It seems like all of the positives are in place and it will increase the property value of this house as well as the surrounding houses. Mr. Horrigan stated that he feels the Board should grant this petition.

Motion to grant passed unanimously with a 7 - 0 vote.



Mr. Witham stepped down from this hearing.

**12) Petition of Charles and Melissa McLeod, owners,** for property located at 67 Ridges Court wherein a Variance from Article III, Section 10-302(A) is requested to allow the existing single family dwelling to be demolished and rebuilt with a 13'11" 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 # 10-11

**SPEAKING IN FAVOR OF THE PETITION**

Charlie McLeod, the owner of 67 Ridges Court, stated that he was before the Board previously to ask for a variance for their front entry at the same dwelling. At the time they had purchased the house, they had looked at it with the idea of doing simple renovations, primarily in the front. Subsequently, they purchased the property and got their contractor in to look at the house and they found that it was not in their best interest to work with what was there. Mr. McLeod passed around pictures to the board. He stated that the pictures show the sub-floor beneath the existing structure. What he was asking for was basically to tear down the structure above the existing foundation and everything that goes back up will be on the existing foundation, on the same scale of what is presently there. The look of the house will change, the size and dimensions of the house will not change. The foundation that is there will be used in its present state. Upon further inspection of the original structure which was well over 100 years old, there was rot and water damage and rather than build their new house on a substandard foundation they are requesting to take the house down and start new, fresh and level on the existing foundation. Mr. McLeod stated that the new house would be safer and less disruptive to their neighbors. The alternative method would be much more time consuming, noisier and just more disruptive to the neighborhood if they had to work around the existing wall that were there.

Mr. McLeod stated that the five requirements had been met. He feels it will be safer to build from scratch over the existing foundation. They will build a modern home to code. It will be faster and less disruptive to their neighborhood. The petition that was submitted shows that they have taken the time to go around to all of their neighbors and share their plans with them and they almost entirely endorsed their plan to rebuild and tear down the existing structure. They will be working with the existing foundation and nothing will change in that regard. The building will be replaced with an in-kind structure and it will be a better, safer and more attractive house as a result of the granting of his petition. The structure is also of a scale and design that will enhance the surrounding property owners. In summation, Mr. McLeod would request that the petition be granted, based on the premise that they will be replacing the structure in kind on the existing foundation which will result in a better and safer structure, with a less disruptive operation to the neighborhood. Mr. McLeod stated that it seems to be a very logical solution to the problem.

Mr. Horrigan indicated that, when looking at this before, they received a letter from Mr. McLeod's immediate abutter, Mr. Kinch. At the time, Mr. Horrigan couldn't understand what the issue was with Mr.

Kinch but Mr. Horrigan wanted to know if Mr. McLeod spoke to Mr. Kinch this time? Mr. McLeod stated that he would take some responsibility for that letter. He had intended to share his plan with all of his neighbors from the beginning. He had not gotten to that point yet as he didn't have any plans yet they had made their original application to the Board to change the entrance of the house so a lot of red flags went up around the neighborhood and many people were nervous. This time he took his plans around to the neighbors, including Mr. Kinch, and they are quite in agreement with his plans and the entire program. Mr. McLeod went over the entire plan with Mr. Kinch and he liked the plan. Mr. Kinch said that Mr. McLeod would not have any problems from him. Mr. Kinch's name is at the top of the list of neighbors who signed the petition submitted to the Board.

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

### **DECISION OF THE BOARD**

Mr. Marchewka made a motion to grant the variance request as presented and advertised. Mr. Jousse seconded. Mr. Marchewka stated that the applicant is simply asked to rebuild what is there. He is not asking for additional relief. He will be replacing a substandard building with a modern building that will be built to code and will be safer. It will presumably look better and aesthetically pleasing to the neighborhood. If anything it will increase property values. Mr. Marchewka sees no reason why the Board would deny this variance. Mr. Jousse stated that the relief that they are requesting is less than what was granted back in August. They granted 8'1" in August and here they are asking that the setback be 13' 11" and everything else is going to be the same. The building is going to be the same, it's just that the entry way is going to close to the property line.

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

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**13) Petition of Aphrodite Georgopoulos, owner,** for property located off Lafayette Road wherein a Special Exception as allowed in Article VIII, Section 10-802 is requested to allow more than 100 cubic yards of fill to be placed on the property where such use is only allowed by Special Exception. Said property is shown on Assessor Plan 267 as Lot 8 and lies within the Office Research district. Case # 10-12

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

Louie Georgopoulos and his wife own 1900 Lafayette Road. Someone approached them to fill the lot with the soil that the city is removing from the waterline installation and they had to put the fill somewhere. He stated that he would like to fill his land and does not see what harm it will do. It will make it safer so that the kids won't run and trip and fall. His taxes have increased yet he has a hardship because his land is not level. All of the surrounding properties are level and his land is becoming a public hazard. He is also helping the city by taking their fill and letting them dump it on his land.

Mr. Horrigan understood that he was asking for 100 cubic yards and that would be a million square feet. Mr. Georgopoulos indicated that he had no idea. That was the figure that he was told to use. Mr. Horrigan believes that this would raise the level of the lot on the average of six feet. Again, Mr. Georgopolos indicated that he is only using that figure because that is what David Desfosses told him. All he wants to do it level it off. He did not realize that he would need permission to do this and therefore was served with a Cease and Desist and he stopped. Mr. Horrigan asked, if the Board was to stipulate that the fill was to be used to level the property, that would not be an unduly restriction? Mr. Georgopoulos said no.

Mr. Witham indicated that he doesn't have any issue with leveling off this sight but was curious if Mr. Georgopoulos had any plans to top it off by planting any vegetation, especially to the rear of the property which is much steeper. His concern is that it may be nice and level but what if a bunch of rain came in and washed it all down the street? Mr. Georgopoulos indicated that it was written on the site plan that it would be seeded afterwards. Mr. Witham asked if it was Mr. Georgopoulos' plan to maintain it by mowing? Mr. Georgopoulos said he would maintain it. He wants it to look good because he is trying to sell it. The better it looks, the better for the neighbors. Only one neighbor came over when he put his sign up.

Mr. Horrigan asked what the source of the fill was? Mr. Georgopolos indicated it was from the water mains. It is whatever they are taking out of the job and depositing it on his land. He was told that there was another job on Dennett Street also.

### **SPEAKING IN OPPOSITION OF THE PETITION**

Bob Reynolds spoke, of 1801 Lafayette Road, right across from this project. Even if this goes through, he is a little disturbed about how much is being done.

Chairman Blalock clarified that if more than 100 cubic yards go in, it would have to be approved by the City Engineer.

Mr. Reynolds stated that while all of the work was going on it took them about 6 to 8 months to finally get it to stop. After it was stopped, they finally found out that they need 4 State permits and 2 City permits to haul dirt from another source in there. At that time they were told to stop. They didn't stop but they got a court order to stop and had until November 1<sup>st</sup> to get it done. He has to admit that they did a good job. Around July 1<sup>st</sup> of this year it was done. They leveled what they had and they hauled all of the rough stuff away and they did a very good job. And then one morning he woke up and they had started again. No one could find anything out. The City didn't know anything about it. He called the State and talked to four people and they didn't know anything about it. What was going on? So, finally, Mr. Reynolds went out of town so his neighbor took over and found out what was going on. Before they could get it stopped, there were over 52 truck loads of dirt there and there it sits. If you stand on Lafayette Road and look down West Road, you realize that West Road is lower than Lafayette Road. If there's a big rain, there is going to be a lot of mud and slush down on West Road and who's going to pick up the tab? The City. Mr. Reynolds wishes they would build something on the land. He wouldn't have any objection to three or four office buildings being built over there. He thinks it would be great, provided they didn't have access on Lafayette Road. They have been told that the dirt will be coming from the water main. Is it contaminated? If it is and it goes on that land, we are going to be stuck with the bill. Is a State permit required for them to take that fill? Mr. Reynolds would like to see someone in the business check into these things instead of just dumping it on the property. Mr. Reynolds stated that he doesn't want to have to check on other people's business to make sure they are doing things properly. He feels that no one does it now because it has been somewhere around 3 -4 months to get anything done about this problem. Somebody has to be in charge and it must be someone in the city. He would think that someone from the city would notice that someone is dumping huge piles of dirt on this land. He would like to know, if he sees something over there, who does he call?

Ms. Tillman told Mr. Reynolds to call her at any time and if she doesn't have the answer she will find out and get back to him.

Mr. Georgopoulos stated that he understands Mr. Reynold's concerns and he did have a chance to read Leo's letter and he thinks what has happened is that he is being held responsible for the filing that was done prior when Gove overstepped his bounds. He was supposed to fill his lot but started a sand and gravel operation there. Mr. Georgopoulos had nothing to do with that and, in fact, was responsible for putting a lock on it so that no one else could go in there. Mr. Georgopoulos stated that they did not pile 35' piles. They only make a couple of piles and were then told to stop, which they did. They will not be going any higher, they are just going to make it level. He just wants to make it look nicer and safer.

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

### **DECISION OF THE BOARD**

Mr. Horrigan made a motion to table the petition until the next scheduled meeting.

Chairman Blalock suggested that the motion, if there was one to grant, to be subject to approval by the city engineer, which is what this whole thing is about if you look under Section 10-02, Part A-1. The whole thing is that the city engineer has to report back.

Vice-Chairman Leblanc moved that the special exception be granted with the stipulation that the city engineer okay the plans. Bob Marchewka seconded. Vice-Chairman Leblanc stated that this is a special exception that they are looking at and, by special exception, the conditions are being met and having the city engineer overlook these plans to make sure the proper safeguards are in place will take care of any health

concerns or dust concerns as they will be addressed and taken care of under those conditions, Vice-Chairman Leblanc feels that the Board has to grant the special exception. Mr. Marchewka agreed with Vice-Chairman Leblanc and had nothing further to add.

Mr. Horrigan stated that he opposes the motion because he cannot understand the sequence of events. If the city engineer came back and said this was a bad plan, then what? We would have already voted it in. It is a special exception and there are some potential problems with this kind of operation. They have not submitted a plan, first of all. They have nothing except the testimony from the petitioner. On the one hand, it seems like a good idea as the materials are dug up from the city water project but there is the potential there that some of the fill may be toxic materials. That is one of their standards for a special exception. Detriment to property values - this lawn sits across the street from Elwyn Park, which is a residential neighborhood, and those folks have had their landscape and scenery terribly abused. It has effected their property values and Mr. Horrigan is very wary of a possibility of adding to the detriment of their property values. No information has been provided about what will be done about the dust and noise. There has been no discussion about traffic safety hazards on the site nor has there been any discussion about the possible storm water run off that the abutter alluded to on West Road. Mr. Horrigan believes that a vote for this motion is really on a wing and a prayer. There are issues that need to be addressed. Mr. Horrigan believes it really should be tabled but his only choice at this point is to vote to deny.

Chairman Blalock stated that he could motion to table and see if he gets a second, which would override the motion that is on the floor.

Mr. Horrigan made a motion to table this until next month's meeting. Chairman Blalock handed over the gavel and seconded the tabling motion.

Mr. Marchewka asked about the issues that Mr. Horrigan referred to. Mr. Marchewka indicated that he believed everyone wanted things to be done correctly, but isn't that what the city engineer is for? To look over the plan and to approve that is going on?

Chairman Blalock stated that he wanted to give Mr. Horrigan and the Board the opportunity to realize that if we deny this it is a done deal and it won't be able to be done. It is something that could be a good thing if it is followed by the code. Chairman Blalock is not saying that the tabling motion will be passed as it hasn't been voted on yet so it could easily fail.

Mr. Horrigan stated that it was not his intention to kill this petition permanently, but, on the other hand, he simply cannot in good conscience vote for the proposal to allow more than 100 cubic yards of fill with no plan at all in front of the board, with some promise that a city engineer will may tell us later that there are problems. He thinks they should make a judgment after they have that information and not before.

Chairman Blalock clarified that there is a motion on the floor and there is a motion on the table. Ms. Tillman indicated that in a tabled motion you can let the applicant know what information you want brought back to the board at the next meeting. What she hears is that Mr. Horrigan wants information of how the fill is going to be placed on the property, how dust is going to be handled, all of the issues that are in the special exception criteria and that is what he is asking the applicant to bring back for the Board's review.

Mr. Witham stated that if the applicant came back with more information it would probably be information that the city engineer will understand but Mr. Witham probably wouldn't understand them. What Mr. Witham has before him is a site plan with grating lines, which he does understand, but if it were to go much further it would be over his head and he would rely upon the city engineer. Maybe they need to expand the special exception to include the implementation of this so that it covers things such as traffic, watering down, seed. The city engineer would have to okay its implementation. Mr. Witham stated that he believes everyone wants the same end result and he has a sense of what that is. He doesn't have a problem with it and he would just rely upon the city engineer.

Chairman Blalock stated that he seconded the motion to get the discussion going. He may not even support tabling it. He believes that as long as this board is willing to make sure that the city engineer approves the accuracy of the plan that is supposed to be provided for this fill project there won't be a problem. The way the discussion was going, he felt that if it's denied it's all done and he simply wanted to get the discussion moving in that direction. He feels the same way as Mr. Witham, that he is not the expert. This is a special

