

**MINUTES OF THE BOARD OF ADJUSTMENT MEETING
PORTSMOUTH, NEW HAMPSHIRE**

7:00 P.M.

CITY COUNCIL CHAMBERS

APRIL 22, 2003

MEMBERS PRESENT: Chairman Charles Le Blanc, Vice-Chairman James Horrigan; Alain Jousse, Christopher Rogers; Nate Holloway; Alternate Arthur Parrott and Alternate Steven Berg
MEMBERS EXCUSED: Bob Marchewka, David Witham
ALSO PRESENT: Lucy Tillman, Planner

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**I. Public Hearings**

6) The Portsmouth Board of Adjustment, acting pursuant to NH RSA 12-G:13 and Chapter 300 of the Pease Development Authority Zoning Requirements, will review and make a recommendation to the Board of Directors of the Pease Development Authority regarding the following: **Petition of Two International Group, owner**, for property located at **Manchester Square** wherein the following Variances from the Pease Development Authority Zoning Ordinance are requested in conjunction with the construction of an 80' x 75' irregular shaped two story building with a 5,324 sf footprint and a 280' x 60' irregular shaped two story building with a 19,800 sf footprint: 1) Section 304.04(c) to allow: a) a front yard setback of 50' where 70' is the minimum required, b) a rear yard setback of 30' where 50' is the minimum required, and c) a lot area of 4.92 acres where 5 acres is the minimum lot size required, 2) Section 304.04(d) to allow a side yard setback of 20' where 30' is the minimum required; and, 3) Section 305.02(a) to allow: a) parking in the front yard setback 41' from the street right of way, and b) parking and loading berths within 10' of the lot line. Said property is shown on Assessor Plan 302 as Lot 2 and lies within the Airport Business and Commercial district. Case # 4-7

**SPEAKING IN FAVOR OF THE PETITION**

Attorney Bernard Pelech addressed the Board on behalf of the applicant, Two International Group. Attorney Pelech reviewed the current site, showing that it was an irregularly shaped piece of land. What was being proposed was a structure that would replaced two small structures and another structure that would replace the old gas station. The existing HCA Health Services building, which exists on its own lot, would remain as is. The irregular shape of the land creates a hardship with the Pease Zoning Ordinance. It was 4.92 acres where 5 acres was required. This was the last piece of land that hadn't been sub-divided and was all that was left. The HCA lot was almost in the middle of the lot in question which further created additional problems in addition to the side and rear yard setbacks. What was being proposed was something that doesn't exist anywhere on Pease at the present time, which is a retail center. They were considering a drug store, barber shop, deli, bank, convenience store, flower shop, mailbox service and food service. This type of design was in great demand at Pease as there was a need for any of these services at this time. This would have a huge impact on the migration on and off of Pease to find these services at other locations. The PDA recognized a need for this type of use and had designated the Manchester Square area as the area to be developed for this potential type of use. They solicited proposals from developers throughout the area to develop this area into some type of retail/service area for the remainder of PDA and the Tradeport. The PDA chose the proposal of Two International Group, contingent upon receiving the necessary variances from the BOA.

Of the five variances that they were requesting, three of them were directly related to the fact that they had a landlocked HCA lot sitting in their midst. It was a rectangle with no street frontage but created their side and rear yard requirement for a variance and was the reason why they only had 4.92 acres rather than 5 acres. Eventually it was the hope of the parties involved that these two lots will be merged however HCA does have a long-term lease with the PDA and this would be a separate long term lease with the PDA.

Attorney Pelech addressed the five criteria. He felt it was clear that it was easy to deal with the hardship criteria for this particular lot. They had a very unique piece of land which could be differentiated from most of the lots at Pease. In the orderly development of Pease, most lots had been carved out very neatly with the 5 acre requirement. This lot was somewhat unique because it was an L shaped lot and has the land locked HCA lot sitting in the apex of the L, creating problems. These problems are such that the Pease Ordinance interferes with the reasonable use of the property, which was the second part of the hardship test. Attorney Pelech did not feel that there was any fair or substantial relationship between the purpose of the Pease Zoning Ordinance as applied to this particular piece of land. Attorney Pelech felt it was interesting to note, when looking at the variances that were being requested and the existing site plan, it showed that there was parking right up to the front property line or within 5' to 8' of the property line which pre-existed the Pease ordinance. They are now trying to not park within 50' of the front property line and are proposing parking to be 41' with a greatly enhanced green space all along Manchester Square and New Hampshire Avenue. They are hoping to add, through the green space, a division between the two pieces of property. The purpose of the ordinance, in seeking 5 acre lots with setbacks, was to allow open space, light, air, and orderly parking. Considering the odd shape of the lot and the HCA lot in the middle, they have done what they can to maintain the spirit of the ordinance and not infringe upon the intent of the ordinance to a point where there wasn't a fair and substantial relationship between the ordinance and this particular piece of property. Attorney Pelech stated that they were parking within 41' of the property line but they certainly are parking further away from the street than what currently exists.

Attorney Pelech indicated that the rear yard setback of 30' where 50' is required is the result of the HCA lot being set in the middle of the L and they were actually going to be 32.7' away from the corner of the HCA lot as far as the rear yard setback. They were going to be 20.5' away from the side yard extended of the HCA lot.

Attorney Pelech indicated that the other variance was to allow parking and loading berths within 10' of the lot line. At the present time, parking actually crosses over the lot line.

In conclusion, regarding hardship, this did meet the three part hardship test set forth in Simplex. Attorney Pelech did not feel there would be any diminution of surrounding properties but in fact would enhance the area tremendously. The applicants are the developers of probably the two most prominent buildings as you enter Pease. Attorney Pelech felt this would be done very tastefully and aesthetically and would not cause any diminution of property values.

Thirdly, whether substantial justice would be done requires a balancing test between the benefit to the public and the hardship upon the owner. It goes without saying that this would overwhelmingly benefit the public. It would benefit not only those individuals who are employed at Pease but would also benefit the entire area. Thousands of gallons of gasoline won't be burned by people driving off of Pease everyday when they need to find a service that is not currently located at Pease, creating air

pollution. In general, he felt it was a win/win situation. The hardship upon the owner if the variance were denied would be substantial. Therefore, he felt that substantial justice would be done.

Attorney Pelech addressed the fourth test, whether or not it was contrary to the spirit or intent of the ordinance. He did not believe that it was as this was the last piece of land remaining on Pease. He believed the applicants had done a masterful job in designing the plans, maximizing the travel ability and availability of services while minimizing the number of variances being sought. The spirit and intent was not going to be violated.

As Attorney Pelech previously indicated, he felt the public interest would be substantially benefited. It was an easy argument to make because they would be providing services which presently don't exist anywhere in the area other than off of the Tradeport. This would provide services for thousands of individuals who are now employed at the Tradeport and would fill a need that has existed since Pease was developed.

In conclusion, Attorney Pelech felt that the application did meet the five criteria necessary to grant the variances. He asked that the Board grant the variances. Representatives were present from Two International, Appledore Engineering and Jerry Dexter from the PDA to answer any questions.

Mr. Rogers inquired about the HCA building and whether it was land locked? Attorney Pelech confirmed that it was.

Mr. Jousse asked what the distance from the right block line on the plan to the old theatre was. Attorney Pelech estimated it was approximately 60'.

Vice-Chairman Horrigan asked Attorney Pelech to point out on the site plan where the variances were. Vice-Chairman Horrigan also pointed out that many of the new buildings on Pease look like used car lots because the landscaping along the front is so thin that all you see is cars. He asked if they could presume that the architect's sketch realistically reflected the actual landscaping? Attorney Pelech felt that that the sketch was accurate and in fact the landscaping may even be more enhanced and they would have to go through Site Review.

Mr. Parrott asked what defined the front boundary line from which the setbacks need to be from? Attorney Pelech indicated that there are actual property lines which are set back a considerable distance from the pavement, a good 10' to 12'. Jennifer of Appledore Engineering indicated that the lines on the diagram are the right of way lines so that is what the front setback is, or 70' from the right of way line. Mr. Parrott asked if the right of way line was set distance similar to the rest of the city? She indicated that the right of ways on the Tradeport are larger than the rest of the city.

Jerry Dexter, consultant for PDA, indicated that the rights of ways for all of the streets are established and the PDA has a plan that shows a right of way for each street and they vary. He believed it was 70' for Manchester Square. It was larger than the average because it leads to the terminal.

Chairman Le Blanc asked if the HCA building had a deeded right of way through this property? Attorney Pelech indicated that it will have a right of way and it's part of their negotiations.

**DECISION OF THE BOARD**

Vice-Chairman Horrigan moved that they recommend to the PDA to accept the variances as presented and advertised. Mr. Rogers seconded.

Vice-Chairman Horrigan stated that the requested variances would be in accord with the public interest and the proposal would enhance the mix of businesses in the Pease Development area. There had been an expressed need for some retail business to be established. There was a general public interest served for all of the people who are employed at Pease. The property was a peculiar shape and the convenient siting of new buildings to accommodate these enterprises does run into dimensional problems almost as a matter of course given the one existing building will remain. No matter how they tried to locate the buildings, they were going to run into some setback problem. The geometric shape of the lot itself dictated that some relief be given. As far as the general purpose of the zoning ordinance and the specific restriction of the property, it was clear that the Zoning Ordinance and the Master Plan would support a development of this kind. He would even stretch the imagination to think that the setback requirements call for a denial of the development and he felt it was clear that the spirit of the Zoning Ordinance certainly supported this proposal. The third test of whether the variances would injure the public or private rights of others, it was hard to imagine any rights, either public or private, being violated. Certainly due care had been taken in situating the larger building relative to the abutting lot. Otherwise it was hard to visualize any impact on any surrounding properties in the area. Vice-Chairman Horrigan indicated that he had already alluded to the spirit of the ordinance as it was part of the hardship requirement. Substantial justice was done by granting the variance. A denial of this proposal would cause a grave injustice to the property owners. Finally, the granting of the variances would not diminish the property values of surrounding properties. This will undoubtedly enhance the values of surrounding properties. Currently there are some older buildings from the Air Force days, especially the gas station on the corner. It was sad to see those go but they really were anomalies now existing within more modern buildings. This particular development would convert what was essentially a very large asphalt expanse into something that would be quite nice and convenient as well. Vice-Chairman Horrigan felt it was a good proposal overall and he felt they should support it and recommend it to the PDA.

Mr. Rogers agreed with Vice-Chairman Horrigan and added that it was not contrary to the public interest. It adds a dimension to the Tradeport that was needed as far as retail stores and businesses that will be used to support the other businesses in the area. It will cut down on the traffic flow going down Woodbury Avenue and other parts of the City. Addressing the special conditions, the land shape was the important one and a great deal of the problems were due to the landlocked piece of property that was to the rear of the property that they plan on developing. Mr. Rogers did not feel that there was any fair and substantial relationship existing between the zoning proposal and the restrictions on the property. These were minor restrictions and he did feel holding them to the variances would create a hardship to the property owners. He did not feel that it would cause any diminution of value to surrounding properties because they are all businesses or commercial office space. Mr. Rogers felt the Board should recommend that the PDA grant the variances.

The motion to recommend to the Pease Development Authority Board of Directors that the variances be granted passed unanimously with a 7-0 vote.

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7) Petition of **Kathleen L. Wells, owner**, for property located at **36 Wilson Road** wherein a Variance from Article IV, Section 10-402(B) is requested to allow an 18' x 24' detached one story garage with a 6' left side yard where 10' is the minimum required. Said property is shown on Assessor Plan 251 as Lot 59 and lies within the Single Residence B district. Case # 4-8

SPEAKING IN FAVOR OF THE PETITION

Kathleen Wells spoke on behalf of her petition. She indicated that she was proposing to take down an existing two car garage which was built around 1960 and replace it with a single car garage. At a later date she was hoping to attach the garage to the house with a breezeway. She had the property surveyed when her children were small and that survey showed that the garage was right on the property line. She would like to have access to the back yard along the left side of the garage because that was where she has oil delivered and when she is able to attach the garage to the house with a breezeway, she will need access for the oil company. She didn't have any issues with her neighbor who was familiar with Ms. Well's plans. The current garage was an eyesore and a good gust of wind could probably take it down. Originally it was a small garage and whoever made it into a two car garage never took down the inside part of it but rather just built up, over and down. One side of the garage, where she parks her car, has cement on the floor and the other side has a dirt floor. When she comes home at night she has encountered skunks and everyone's cats use it as a litter box all winter long. She would like to have an automatic door so that she could pull into her garage and close the door behind her for safety reasons.

Vice-Chairman Horrigan asked whose fence it was. Ms. Wells indicated it was her fence. Her neighbor has since put a 6' wooded fence between the garages because when her children were small they would play basketball and the ball would be in her yard constantly. Her neighbor's fence was probably on Mrs. Wells property but she didn't really care about that. There currently wasn't enough room for anyone to even squeeze between the two garages.

Mr. Jousse asked about when she put up the new garage, if the right side of the garage was going to be where the right side of the current garage currently was. Mrs. Wells confirmed that.

Chairman Le Blanc asked if the footprint of the garage would be smaller than it was now. Mrs. Wells confirmed this and indicated that there would be 6 feet between the two garages.

DECISION OF THE BOARD

Mr. Rogers made a motion to grant the petition as presented and advertised. Mr. Parrott seconded.

Mr. Rogers stated that the variance was not contrary to the public interest. It was reducing the non-conformance of the existing building by adding distance between the property line and the garage. Other than that, the building was going to be on the same footprint that it was already existing on. The restrictions as applied to this specific property does interfere with the owners use of the property because she wants to rebuild a building that was already existing with more livable and safer conditions. Mr. Rogers felt that the neighbor would enjoy more air and green space between the two buildings. He did not believe there was any fair and substantial relationship existing between the Zoning Ordinance and this specific property because, unlike a property that is going to be built new and interfere with the neighboring property, this was actually going to be improving the property and making it a safer and better looking area. It would not injure the private or public rights of anyone. The neighbor had obviously approved of the venture and it would make both of their lives a little bit better by being able to get around the garage. Substantial justice would be done in granting this

variance. It would not diminish the value of surrounding properties, it would increase the space between the properties, it would allow more air, more green space, and it was going to change an old non-confirming building into a new, more conforming building.

Mr. Parrott agreed with Mr. Rogers. He indicated that he was familiar with the building and it was in disrepair. A new building would be a real benefit, not only to this particular property but to all surrounding properties as well. This would be substantially less non-confirming because there would be a 6' alley.

Vice-Chairman Horrigan addressed the hardship and stated that he had determined that the garage could not go on the other side of the house because the line of sight was not very good from that spot. The street curves around from an adjoining street and there would be some safety concerns. Also, it was a very heavily wooded part of the lot which was attractive and it would not only reduce the petitioner's value but would impact the value of surrounding properties to remove some of the mature trees. Therefore, putting the garage in the proposed location was the more reasonable use of the property even though it was not entirely within the setback requirements. He felt it would be unreasonable of the Board to insist that the garage be built elsewhere.

Mr. Jousse indicated that the granting of the variance would be consistent with the spirit of the ordinance.

Chairman Le Blanc stated that he felt Mr. Rogers misspoke when he said it would essentially sit on the same footprint because it was actually 6' smaller although it was on the same footprint.

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

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8) Petition of **B. J.'s Wholesale Club, owner, Monro Muffler Brake Inc., applicant**, for property located at **1801 Woodbury** wherein a Variance from Article II, Section 10-208(36) is requested to allow a use which use is allowed by a Special Exception. Said property is shown on Assessor Plan 215 as Lot 14 and lies within the General Business district. Case # 4-9  
**Tabling Requested**

Request of the applicant to table until next month.

A motion to table until May 20, 2003 was unanimously granted with a 7-0 vote.

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9) Petition of **Getman Realty LLC, owner, Kelly Wright, applicant**, for property located at **82 Fleet Street** wherein a Variance from Article IX, Section 10-908 is requested to allow three attached signs totaling 26 sf (24" x 96", 8" x 96" & 8" x 96") for a total aggregate on the property of 94 sf where 75 sf is the maximum aggregate allowed. Said property is shown on Assessor Plan 117 as Lot 41 and lies within the Central Business B and Historic A districts. Case # 4-10

SPEAKING FOR THE PETITION

Kelly Wright addressed the Board. He indicated that this was a huge lot shared by three street level businesses and three upper level offices. He indicated that he was not asking for anything extraordinary

but as the maximum for the district were already taken by the other businesses, his sign went over the allowed signage for that building.

Mr. Holloway asked if the sign was going to be attached to the glass? Mr. Wright confirmed that they would be inside the glass. Mr. Holloway asked if anything would be above the windows? Mr. Wright said no, nothing would be attached.

Vice-Chairman Horrigan asked if the signage would be painted or were they decals? Mr. Wright indicated they were decals.

Mr. Jousse asked how many other businesses were in the building on the street level. Mr. Wright indicated that there were three others.

DECISION OF THE BOARD

Mr. Rogers made a motion to grant the variance as presented and advertised with the stipulation that the signage must be applied to the glass window. Mr. Jousse seconded.

Mr. Rogers felt that the request for variance was not contrary to the public interest. There was 75 s.f. of signage available to be used on that building and he was not asking for a great deal more. Mr. Rogers was pleased to see someone come in and ask for a variance for glass signage. He felt it was not contrary to the area. Special conditions existed as it was in the downtown area and it was in an area where signage is necessary. The picture that Mr. Wright has shown was very appropriate and was not gaudy, it was not lit and it was not on the building itself. He felt the restrictions would interfere with the use of the property if they don't allow this little bit of signage. He didn't feel there was any relationship between the purposes of the Zoning Ordinance and the restrictions on this particular property. It was downtown and most of the buildings have signage in the windows anyway, whether they requested it or not. This was very appropriate signage as there was nothing attached to the outside of the building itself. It would not injure the public or private rights of others as it was commercial property. There were signs there. The residents upstairs were not effected by it. Mr. Rogers felt that substantial justice would be done to grant the variance as there would be a hardship if they aren't allowed to put up some sort of signage. The way they were asking it to be applied was very reasonable. There was no diminution of value as the signs were attached to the window and not sticking out to interfere with the value of the property. It would increase the value of the building by allowing them to use this space.

Mr. Jousse agreed with Mr. Rogers and added that one of the hardships was the fact that the other three tenants had used up 66 s.f. of signage, only leaving 9 s.f. of signage for the applicant which was not a reasonable amount of signage to advertise his business. It would allow the applicant to have the same square footage of signage as the rest of the businesses on that property. Granting the variance would not diminish the values of surrounding properties at all.

Vice-Chairman Horrigan disagreed with Mr. Jousse's arithmetic, stating that it was 58 s.f. so the applicant had 7' left, which supported his argument even further. Vice-Chairman Horrigan also stated that the reason for the sign ordinance was to prevent putting up too much signage in an area. The owners had approached this in an almost minimalist fashion and were proposing to just put their name and what their business will be on the window. They had made it as simple as they could. Vice-Chairman Horrigan felt it would impose an unreasonable restriction if the Board did not allow them to

advertise what their business consisted of in a fairly attractive manner. He felt their proposal was very reasonable and consistent with the Zoning Ordinance with regard to signs.

A motion to grant passed with a 6-1 vote, with Chairman Le Blanc voting in the negative.

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10) Petition of **Timothy and Priscilla Coughlin, owners**, for property located at **185 Broad Street** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(2)(c) are requested to allow a 68 sf irregular shaped front entry with: a) a 5'11"± front yard where 15' is the minimum required, and b) 27.3% building coverage where 25% is the maximum allowed. Said property is shown on Assessor Plan 130 as Lot 19 and lies within the General Residence A district. Case # 4-11

**SPEAKING IN FAVOR OF THE PETITION**

Timothy Coughlin addressed the Board. He indicated that they wanted to cover their front stoop, which was a cement structure that was not part of the building as defined by the City. He provided a handout to the Board, showing the location of the stoop. They were doing quite a bit of work on the upstairs that does not have anything to do with their variance request. What they need the variance for was to put a roof on top of the stoop. He understood that there were two reasons why he needed to get a variance. There was the setback requirement and the lot coverage. The setback requirement would simply be changing an already non-conforming use. There was a 15' setback requirement and the home was currently only 5' from the sidewalk which the City recently installed. The lot coverage would change minimally. He pointed out to the Board that he had discussed this with his neighbors and they were in support of his proposal. He also pointed out that aesthetics were a major factor. If someone was to stand on the corner of Spring Street and Broad Street and look down Broad Street both ways, you would see that the homes on Broad Street were all considerably closer to the road than his was. The City tax map reflects that. He also recognized Wendy Walton, the architect on the project, who was available to answer any questions the Board had. He felt the renovations would beautify the neighborhood and would serve the public interest. He felt it was consistent with the Ordinance and was a very minimal increase in the lot coverage. He felt substantial justice would be done to the neighborhood and none of the surrounding homes would be diminished in value.

Mr. Coughlin stated that the public interest would be served by the granting of this variance. Most of his neighbors had a better looking entrance to their homes. His was just a bare bones stoop on the front of the house. They have ice and snow accumulation that the roof would cover. The mailman and other delivery persons would benefit from this roof. The hardship was the same evidence. He needed to have a reasonable use of his property and a reasonable use would be taking precautions to make his home safe by covering the stoop in front of his home. It would be a very minimal increase to the lot coverage. Substantial justice would be done by granting the ordinance as it was benefiting the neighborhood in general. It would be more attractive to the public and would increase the values of the homes on Broad Street. If any of his neighbors objected they would have been present at the meeting to express their disapproval.

Mr. Jousse asked for clarification regarding whether the roof over the steps would be any closer to the street than the bottom of the existing front steps? Mr. Coughlin indicated that the stoop may actually extend further than the roof.

Chairman Le Blanc asked what was the height of the stoop? Mr. Coughlin indicated it was three steps and he believed it was 24". Chairman Le Blanc asked if the stoop was going to change at all and Mr. Coughlin indicated that they weren't putting the posts up as reflected on their first diagram but rather just putting the roof on.

Wendy Welton, the Coughlin's architect, indicated that the lot that the building sits on was 5,000 s.f. and in the General Residence A district the lot size is supposed to be 7,500 s.f. so he basically has a little tiny house on a little tiny piece of property that was already set close to the road.

Chairman Le Blanc asked if this lot was smaller than the other lots in the area? Ms. Welton indicated that the lot is smaller than the lot size for General Residence A so he is going over the required lot coverage.

### **DECISION OF THE BOARD**

Vice Chairman Horrigan made a motion to grant the petition as amended by the drawing submitted at the meeting. Mr. Parrott seconded.

Vice Chairman Horrigan addressed the front yard setback which was approximately 6' from the street that seemed rather unusual compared with the other houses in the neighborhood. The front stoop was already there and he could not imagine what they could require of the property, other than moving the house back or asking them to go in and out a ladder. It appeared to be an irrevocable condition that the front steps were within the front setback. As far as the building coverage was concerned, it was a very small increase that they were asking for and if you looked at the lot you would see that the house did not seem to dominate the lot. The back yard was still somewhat spacious even though they were somewhat below the required open space in the Ordinance. He felt that what they would be granting would hardly even be noticed.

Vice-Chairman Horrigan stated that the requested variances would not be contrary to the public interest, as stated by the Petition. The addition to their house would improve its appearance and also, living in New England, one should have some type of coverage over their front steps for safety purposes. It would improve the aesthetics of the neighborhood plus it would improve the safety of this particular household. As far as hardship was concerned, the unique setting was that they have one front entrance and, short of moving the house, they would not be allowing them what was a most reasonable change in the house, mainly some protection against the elements. He could not see any fair and substantial relationship by which they should deny them approval. He could not imagine any Zoning Ordinance that would prevent one from making a safer entryway into a house. As far as injuring the public or private rights of others, it seemed to Vice-Chairman Horrigan that they would be enhancing those rights for the same reasons – aesthetics and safety. He felt that he kept repeating himself but the variance was consistent with the spirit of the ordinance because it was designed to allow people to enjoy their households in a safe manner. By denying the variances, they would be causing a considerable hardship upon the homeowner if they insisted that they either move the house or somehow removed the front entrance. This clearly was a much better solution to their problem. The variance would not diminish the values of surrounding properties and more than likely would enhance their values.

Mr. Parrott felt that this was a technical requirement because the stoop was already present. With respect to the particular analysis, the requested variance would not be contrary to the public interest, he did not know how you would define the public interest in a case such as this one. It seems to him that

it was probably just synonymous with whether the granting of the variance would not diminish the values of surrounding properties. Mr. Parrott felt those were the only folks who would have any interest in this particular change. It was a positive change and obviously would enhance the value of surrounding properties.

Mr. Jousse indicated that they were being asked to grant the variance to increase the lot coverage and he would support the motion but he wanted it noted that they were not increasing the footprint. They were just putting a roof over the existing stoop.

Chairman Le Blanc indicated that they were increasing the footprint of the house by putting the roof over the stoop.

The motion to grant as amended was granted unanimously by a 7-0 vote.

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 11) Petition of **Louis and Tracy Halle, owners**, for property located at **929 South Street** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(2)(c) are requested to allow a) a 2'6" x 14' one story rear addition with a 5'6" rear yard where 20' is the minimum required, b) a 4' x 8' one story right side addition with a 14' rear yard where 20' is the minimum required; and, c) 25.6% building coverage where 25% is the maximum allowed. Said property is shown on Assessor Plan 132 as Lot 18 and lies within the General Residence A district. Case # 4-12

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernard Pelech addressed the Board on behalf of Louis and Tracy Halle. Attorney Pelech indicated that 929 South Street was on the corner of South Street and Wibird Street and was a sub-standard lot, being 5,343 s.f. The property was situated to the rear of the lot to comply with the South Street front yard setback and also to comply with the Wibird Street front yard setback. Attorney Pelech read into the record a letter of support signed by six of the abutters. Mr. Dockham, who abuts the property on Wibird Street, wrote a letter in opposition. Attorney Pelech also submitted some photographs that showed the location of the proposed addition as it related to Mr. Dockham's home. He did not believe that Mr. Dockham saw any plans or documentation. The unique factor about the 2'6" addition that was proposed on Mr. Dockham's side of the property was the fact that it was going to be about 7' above grade. Another factor, and a reason for the photograph, was to show that the addition was completely to the rear of Mr. Dockham's home. The Dockham home sits considerably in front of the Halle home. They were talking about 30" for the addition.

Attorney Pelech indicated that no diminution of property values would result from the granting of the variances. The house was on a corner lot and was set substantially to the left side and the rear. The existing side yard, or the rear yard as it was called, was not conforming. The addition of the 2'6" to the rear was not going to effect any surrounding property values for two reasons. It was completely behind Mr. Dockham's home and it was 7' above the ground. The three property owners who own the condominiums on the right hand side all signed the Petition in support of the Halle's application.

Attorney Pelech indicated that they believed there was a hardship and this lot could be distinguished from others because it had a very large home on a sub-standard sized lot and it also was a corner lot. Because the property was set back to comply with both South Street and Wibird Street setbacks, the setbacks in the rear and the right hand side were very small. They believed the ordinance interfered with the reasonable use of the property. They were talking about a 2'6" addition on the right hand side

by 14' that was raised up so that someone could walk underneath it. In the rear they were talking about an addition that was basically covering an existing set of steps. That resulted in the 11'6" side yard setback. The 2'6" addition resulted in a 5'6" setback and originally the set back was 8'. They believed the relief being requested was minimal. They did not believe that there was any fair or substantial relationship between the purpose of the ordinance as it related to this request. If they were unable to talk underneath the addition and if it weren't 7' in the air and if it were not behind Mr. Dockham's home, then it would be difficult to say that there was no fair and substantial relationship between the purpose of the ordinance. There was substantial room between the Dockham residence and the Halle residence and the addition was not going to infringe upon or lessen the distance between the two buildings because it was behind the Dockham residence. There would still be adequate light, air and access for emergency vehicles. The right hand side addition, which was over what was an existing stairwell now, was not going to be contrary to the spirit or frustrate the purpose of the ordinance. Therefore, they believed that there was no fair and substantial relationship between the spirit of the ordinance.

Attorney Pelech stated that the third variance was where they were requesting 25.6% where 25% was allowed, which was a very minimal amount. They did not believe that any public or private rights were going to be interfered with if the variance was granted. Attorney Pelech felt that if Mr. Dockham were present to look at the plans, he probably would not have an objection. However, he did not see the plans and wrote his letter of objection from Florida.

Substantial justice would be done as the hardship on the owners would not be outweighed by the benefit to the general public in denying the variance. It was a minimal request and the Halle's had been trying to find a way to redesign their kitchen to make it useable. With these two small additions they could accomplish that. The purposes of the ordinance were not going to be frustrated and it would not create any benefit to the public interest if the variance were denied. The 2'6" addition, overlooking the Dockham's backyard, was not going to be between the two homes.

They did not believe that this would be contrary to the public interest. They believed there would be a benefit by way of an enhanced tax base and enhanced aesthetics in the area.

Attorney Pelech indicated that they felt the five criteria had been met. The Halle's had spoken with their neighbors and gotten universal support except for Mr. Dockham. Mr. Halle was present if the Board had any questions.

Mr. Berg asked about where Mr. Dockham lived? Attorney Pelech indicated that he lived on Wibird for 6 months and in Florida for 6 months.

Vice-Chairman Horrigan asked about the way Attorney Pelech was describing the relationship between the Dockham property and the Halle property. Attorney Pelech confirmed that the rear of the Halle home faces the side of the Dockham property. Vice-Chairman Horrigan visited the property and felt that the Dockham house from one frame of reference was to the rear of the Halle house. Attorney Pelech indicated that that was the case if you were looking at it from South Street. He was talking from the Wibird Street viewpoint that Mr. Dockham's home was further forward that the side of the Halle house. Vice-Chairman Horrigan felt that Attorney Pelech was implying that the Dockham house wasn't looking at the Halle house but it does, and Attorney Pelech agreed with that statement.

Vice-Chairman Horrigan also asked if the windows under the kitchen addition were basement windows. Attorney Pelech confirmed that they were and the addition would be above them.

Mr. Holloway asked what the size of the lot was? Attorney Pelech stated that the city tax map stated 5,343 s.f. Ms. Tillman stated that the survey stated 5,386 s.f.

Bob Philbrick who lives on the corner of South Street and Wibird Street and is a 3rd generation resident of that address spoke in favor of the petition. He indicated that the house was very cramped and was in the far corner of the lot which made it very difficult to add on to their kitchen. It was an old house and was built with a very small kitchen. He also spoke to some of the neighbors about the addition and they were all very much in favor of the addition and signed the petition.

Chairman Le Blanc read the letter that was received from Mr. & Mrs. George Dockham, in opposition to the addition.

DECISION OF THE BOARD

Mr. Rogers made a motion to grant the petition as presented and advertised. Mr. Parrott seconded. Mr. Rogers stated that he did not feel that the variance was contrary to the public interest. The addition was to the rear area of Mr. Dockham's property and the other abutters didn't seem to have any concerns with it. He felt there didn't seem to be any problems with the rear setback and he felt the side setback was just going over the stairwell and was already existing. There were special conditions because the Zoning Ordinance did restrict their use of the property. Their building had a very definite hardship as it was placed in the rear corner of the oddly shaped lot. Because the rear was placed to the side of Mr. Dockham's property, Mr. Dockham is only required a 10' setback where they are required a 20' setback. Mr. Dockham stated that if the addition was built within 20', it would block his light or air yet it was already within 8'. Mr. Rogers did not feel that there was any relationship between the Zoning Ordinance and this property as they have a huge front yard and side yard and it has been situated in such a way that the house was in the rear corner of the property. There was no way to add on to the side or back of the house without getting a variance. He felt it was consistent with the spirit of the ordinance as homeowners deserve to use their property as they see fit in some cases as long as it doesn't diminish the values of surrounding properties. If anything, it would improve the side with the stairs as they will now be enclosed. There was no diminution of value to the adjacent properties. There was a fence and it will not restrict air or light flow. It was a fairly minor addition.

Mr. Parrott agreed with Mr. Rogers. He felt it was a very minor request and he didn't see where it would intrude upon the adjoining property. Because the addition was off of the ground it wasn't going to effect the land. He felt it was unlikely that it would change the value of either house and if it did it would be a positive change. He felt that the size and arrangements of the applicant's house created a hardship and satisfied that requirement.

Vice-Chairman Horrigan stated that he was originally concerned with the Dockham property and their private rights. As a result of the hearing he was clear that the view of the Dockham's would not essentially change and with the very high elevation of the addition it would still allow for the circulation of air. There would still be a small green space between the two houses. He did not believe it would diminish the value of the abutting property or interfere with their private rights that would be their view and circulation and therefore felt comfortable supporting the petition.

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

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**II. Adjournment**

There being no further business to come before the Board, the Board acted unanimously to adjourn and meet at the next scheduled meeting on May 20, 2003 at 7:00 p.m. in the City Council Chambers.

Respectfully submitted,

Jane M. Shouse  
Secretary

/jms