

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

7:00 P.M.

CITY COUNCIL CHAMBERS

February 24, 2004

(Reconvened from
February 17, 2004)

MEMBERS PRESENT: Chairman Charles Le Blanc, Vice-Chairman James Horrigan; Alain Jousse, Nate Holloway; Bob Marchewka, Alternate Arthur Parrott and Alternate Steven Berg

MEMBERS EXCUSED: David Witham,

ALSO PRESENT: Lucy Tillman, Planner

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Chairman LeBlanc called to order the Portsmouth Board of Adjustment reconvened for the February 24, 2004 meeting.

Chairman LeBlanc stated that requests had been received to table original items #10, #11, and #12. Unless there were an objection, he said he wanted to take all three and table them at once so that anyone present for one of those petitions could leave and come back next month. Mr. Holloway moved to table the three petitions until March 16,2004. Mr. Jousse seconded the motion.

Mr. Horrigan commented on tabling petitions. He said it concerned him half of this evening's schedule was tabled until the next meeting. It would load up the March meeting. After some discussion, it was unanimously voted to table #10, #11, and # 12 until the March 16, meeting.

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I PUBLIC HEARINGS

7) Petition of **GRN Realty Trust, Glenn and Robin Normandeau, owners**, for property located at **11 & 15 Pickering Street** wherein the following were requested: 1) a Variance from Article II, Section 10-208 to allow two dwelling units in a new building in a district where dwelling units are not allowed, and 2) a Variance from Article III, Section 10-304(A) to allow a 1,820 SF irregular shaped two-story building with: a) a 5' front yard where 30' is the minimum required, and b) a 20' right side yard where 30' is the minimum required. Said property is shown on Assessor Plan 102 as Lot 24 and lies within the Waterfront Business district. Case # 2-7

Mr. Glenn Normandeau, owner, addressed the Board. He submitted exhibits and letters of support for the record. He said the paper he just passed out showed their property on Pickering Street where they operate their waterfront business, Pickering Marine Contractors (highlighted in green). The lot (highlighted in pink) is their home, and the orange highlights are neighbors who support their proposal. The property has been in his family for 30 years. Two of the buildings near the road currently have residential use. One is a single small house. The other has two apartments in it. The buildings need considerable attention and do not contribute to the attractiveness of the neighborhood. What he seeks to do is to take down the two buildings and replace with a single building, which would have two residential units in it. They would maintain their marine

construction business, which they have operated for the past 14 years on the waterfront. They requested the setbacks so they could reposition the proposed building to better accommodate their commercial operation. The proposed project is supported by the abutting property owners. It should be a benefit to the values of those properties as well as their own across the street. He said he thought it would be in the public interest from an aesthetics view.

Chairman LeBlanc asked if the two buildings were salvageable. Mr. Normandeau said he did not think they were. The cinder block house was built in the 1950's on a slab on the ground. He said it floods after every winter storm. The other building has significantly deteriorated underneath. Neither building has any historical significance.

Mr. Horrigan asked if the design of the house would be compatible with the surrounding properties.

Mr. Normandeau said his architect, Anne Whitney, could address this issue better than he. Ms. Whitney said she included proposed elevations in the information packet. She said asking for approval from this Board would be contingent upon the Historic District allowing for the removal of the other two buildings. The new proposed building is Colonial style.

Mr. Berg inquired about surrounding properties. Mr. Normandeau said his property is Lot #24. Lot #25 is a combination residential and commercial use. Lot #34 is Mrs. Marconi's restaurant and a residence. Lot #31 is Wiley Brewster's bait and tackle shop on the water and his home. Lot #30 is a pump station owned by the City of Portsmouth. Lot #29 is LaCava's on the wharf and apartments towards the street. Everything along the waterfront is a mix of commercial and residential. Mr. Berg noted that if Mr. Normandeau were denied residential use on this property, he would be the only one along this stretch of waterfront that is not a mixed use property. Therefore, he said, there is no fair and substantial relationship between the zoning ordinance and Mr. Normandeau's variance request.

Ms. Whitney made some additional comments about the buildings. Currently the existing small building is right on the property line. It is being pushed back 5 feet. By shifting the building down away from the existing 2-story building, some of the views on Pickering Street would be improved even though the roofline is a little higher. Mr. Horrigan asked about moving the building back even further. Ms. Whitney said it would encroach on the waterfront commercial use. The depth is almost the same as the existing building, but a little space is gained by the repositioning of the building. Mr. Berg inquired about a settlement with the City of Portsmouth of several years ago that said the building could not be moved back. The ordinance said that the waterfront business must be maintained.

SPEAKING IN FAVOR OF THE PETITION

Esther Kennedy of 41 Pickering Avenue addressed the Board. She said she was highly in favor of the petition. She said it would mean going from three residences down to two. It would also get rid of a cinder block building and replace it with a nice cape. It would end the flooding problem that occurred after every rainstorm. Mr. Berg asked her if this variance would impact the value of her property. Ms. Kennedy said it would not, and her taxes are going up.

Mr. Peter Morin of 49 Pickering Street addressed the Board. He said he lived across the street from the site, and he fully supported this project.

The public hearing was closed.

DECISION OF THE BOARD

Mr. Horrigan moved that the petition be granted as advertised and presented. Mr. Parrott seconded the motion.

Mr. Horrigan commented on some important background facts that were brought up. The abutting properties in this waterfront district were also mixed commercial waterfront usage and residential. Also, as pointed out by the architect, there is a problem of maneuvering a new residential unit on this property without encroaching upon the commercial use of the property. The public interest is well served going from three residential units to two. This would create less traffic and less density in the neighborhood. The existing buildings are not in good shape. They needed to be renovated or replaced. The plan is very reasonable given the nature of the property. It reduces some of the nonconforming features of the existing property. It would be consistent with the spirit of the ordinance. Compared to the existing structure, this new project would increase the value of the property and surrounding properties.

Mr. Parrott said the variances clearly couldn't comply with setbacks, which were instituted a long time after this neighborhood was built. It is not realistic to impose in this area. Dwelling units are not allowed in the waterfront district. However, this is a pre-existing nonconforming use, and the proposal to lessen the degree of nonconformance is consistent with the previous Court ruling included in the packet.

Mr. Berg said the variances would not injure the public or private rights. Neighbors spoke on behalf of the proposal as presented. The zoning is not in harmony with the neighborhood as it is now. It is clearly a mixed residential and commercial area, and this variance request continues that. The zoning restriction as applies to this specific property interferes with the reasonable use of that property. It is not reasonable to prohibit someone from downsizing and making a property more conforming.

As a result of such consideration, it was unanimously voted to grant the variances as presented and advertised.

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8) Petition of **2400 Lafayette Road LLC, owner, "Wash Me Now," applicant**, for property located at **2400 Lafayette Road** wherein a Special Exception as allowed in Article II, Section 10-208(36) was requested to allow 4,350± SF car wash in a district where such use is allowed by Special Exception. Said property is shown on Assessor Plan 273 as Lot 6 and lies within the General Business district. Case # 2-8

**SPEAKING IN FAVOR OF THE PETITION**

Attorney Peter Loughlin, representing the applicant, addressed the Board. Mr. Loughlin said that Mr. Jalbert and Mr. Connolly were also with him. Mr. Loughlin said he submitted a letter

January 28, 2004, to the Board requesting a special exception. Specific conditions must be met. Service work must take place inside the proposed building. No inoperative vehicles would be left on the property. There were no residential districts within 200 feet. There were no pump islands. There was no direct curb cut onto any public street. The minimum front yard was a minimum of 50 feet and rear yard was 50 feet. All the various specific conditions for special exception were met for this application.

There were general exceptions to be met. There was no hazard to public or adjacent property. A list of typical cleaning agents used was included with the application. There would be no diminution of property values in the vicinity. The building is one story. It is next to a massive parking lot. It is bordered by Water Country, a used car lot, 99 Restaurant, and Taco Bell. There was no impact on these surrounding properties. It would have no impact on any residential property. There would be no creation of traffic or safety hazard. It is a 1 1/2 acre lot. The use fits well onto the lot. The access is through the existing driveway. There is no direct access. There is no excessive demand on municipal services. The facility does use 16,000 to 20,000 gallons a day. However, the City Water Department said it is not one of the major users. A nearby water tank contains 7 million gallons of water so there is plenty of capacity. There would be no storm water run off. There would be no run off from the car wash facility.

In summary, Mr. Loughlin said he felt all conditions for a special exception variance had been amply satisfied.

Mr. Parrott expressed concern about the access to the parking lot even though it did have frontage on Lafayette Road. He wondered what would happen if something happened to Southgate Plaza shopping center. Mr. Loughlin said the property in question enjoys a 75-foot parking access easement. This property has the right to use that 75 feet as did the Granite Bank no matter what happens to the mall.

Mr. Horrigan asked who owned the access road from Lafayette Road into the mall. Mr. Loughlin said that the mall owned it subject to the right of this tenant, 99 Restaurant, and Taco Bell to access from the road into that parking lot. They had a legal access to that driveway. Mr. Parrott further expressed his concern that if Shaw's left and the mall were sold, what would happen to the access if the new owners did not want to honor that arrangement. Mr. Loughlin said that if Mr. Jalbert were not assured that he would have access, it would be worthless to him. He had legal access to use that driveway. The mall could not take that access away.

Mr. Horrigan had questions about water usage. Would there be a recycling system? Mr. Loughlin said the plan was to install the vaults that would permit it to be used, but at this point there was no intention to recycle. It was estimated at 16,000 gallons per day or 4.3 million gallons a year would be used. Mr. Horrigan asked how that usage compared to other users. For the record, Mr. Loughlin submitted a list of the top 20 water users in Portsmouth.

Mr. Connolly, speaking on behalf of the applicant, said he wished to respond to Mr. Parrott's question about access. He said in the deed it did contain specific language in regard to access and egress from U. S. Route 1 into the subject plaza and forever committed use of those access and egress ways as a right for perpetuity. Additionally it goes on to talk about potentials in the future and the rights of succeeding properties to those improved access and egress ways.

Mr. Connolly commented on Mr. Horrigan's question in regard to water usage. He said if you took 16,000-20,000 per day usage and compared that amount on a per wash basis, it would take 40 gallons per cycle per wash. If that were compared to a customary hand wash at home, it would take 80 to 100 gallons. The home wash does nothing in terms of containing or treating run-off water from that process. In contrast, the car wash has a fully enclosed capture system for the run-off area into an initial basin with deep sides. Then the run off goes into an oil and grate holding tank appropriately sized for collection of large particulates and sand. It is pumped out by a licensed hauling firm on a periodic basis and disposed of.

Mr. Connolly also addressed a Planning Department memo in regard to icing problems presently encountered at some of the other car wash facilities. He said Mr. Loughlin had already mentioned the amount of egress lane footage that contains the residual dripping from cars and remains on site. The PDQ machinery contained in this particular facility is basically a washing and drying facility contained on an arched entry that passes on rails, once over the car, then front to rear, and then rear to front. That makes the drying process a twice dry as opposed to a single dry in all the other facilities. The car cannot get out of the auto bay until the dry cycle is completed. Once that is completed, the relay switch allows the door to come up, and the vehicle rolls out of the facility. Mr. Horrigan inquired if there were doors at both ends to prevent moisture from blowing out on cold, windy days. Mr. Connolly said that was the reason for the doors was to fully contain moisture in cold weather. It also contains the moisture so it does not get out and freeze up outside the building.

The Planning Department memo referenced the soaps and liquid agents used. Mr. Connolly submitted for review a list of all the products used and the data safety sheets with specific information on each.

Another question asked by the Planning Department was the length of cycle time. Mr. Connolly said it could be determined by options whether waxing, etc. was required, but he said the typical cycle took about 7 minutes. On a regular schedule, 7 cars could be serviced at once for 7 minutes each or 49 minutes an hour. The self-serve bays take much longer. Mr. Connolly said the shortest distance a vehicle, rinsed and dried, would travel from the car wash to an egress route would be 300 feet. This was two to three times longer than the other car washes.

### **SPEAKING IN OPPOSITION**

Randy Pacino of 915 Spring Brook Circle addressed the Board. He said he lived in a condominium across the street from the proposed car wash. He said he understood the purpose of a zoning ordinance was to encourage the most appropriate use of land and to protect and improve the quality of life for all people throughout Portsmouth. On Lafayette Road, there are two existing car washes just 3/10 mile apart. Tonight a third car wash proposal is being considered, and that would make three car washes within half a mile. He said he is not opposed to a car wash, but according to the yellow pages, Portsmouth already has four. He did not see the addition of a third car wash off Lafayette Road improving the quality of life of the people of Portsmouth. The only one to benefit from that would be the owner of the car wash. He asked the Board to not grant another special exception for a car wash and said Portsmouth had enough.

The public hearing was closed.

## DECISION OF THE BOARD

Mr. Horrigan expressed concern that one of the items scheduled to be heard at this meeting, and subsequently tabled, was another car wash. As far as he could tell, that car wash was almost next door to the one under discussion. He did not like the traffic implication of two car washes, side by side.

Mr. Horrigan made a motion that this request for special exception variance be tabled until next month's regular meeting at which time a request by 2454 Lafayette would be heard in respect to the traffic issue. Mr. Parrott said he would like to hear the Planning Department's position on both before he seconded the motion.

Mr. Marchewka did not feel the petition should be tabled. He said it was before the Board now. The car wash across the street could come before the Board again, and it might not. If this one is passed, maybe the other one across the street will decide against it. He said he did not see how the Board can table it and wait for another car wash to come by. He said he did not think that was fair.

Mr. Holloway agreed with Mr. Marchewka.

Mr. Marchewka said someone had to come first whether this week's applicant or next time. The Board can't really do two at once and try to decide which is the best car wash.

The motion to table was denied.

Upon consideration, Mr. Marchewka moved that the petition for a special exception be granted as advertised and presented. Mr. Berg seconded the motion.

Mr. Marchewka said it was a good site for a car wash. It is at a lighted intersection. It is a relatively large lot. It is quite a distance for safe access and egress. As the applicant showed, it also has access and rights to the adjacent parking lot. There are no wetlands next to the site. There is no residential area next to the site. It is not affecting anyone. The only potential problem he saw was the traffic issue. The applicants presented a good case that it is not going to be an issue. There is quite a bit of stacking area. There is room for a considerable number of cars. Compared to the other car washes in the area, this is far and above the best site of any of them. The newest car wash down the road looks like it was shoe horned into the site. The access is only on Route 1 and is right next to some wetlands. He did not think that was a great site. The same could be said with the car wash on Woodbury Avenue. It has traffic hazards. This site is appropriate. The use is allowed provided the special exception meets certain criteria. The applicants have presented a good case. One abutting property owner suggested that there are too many car washes. It is not the Board's responsibility to regulate that. Route 1 is home to lots of things of which there are too many. The applicant has met the criteria and should be granted a variance.

Mr. Berg stated it is not the Board's job to interfere with business decisions and say there is already one of those there so you cannot put in another one. If it is permitted and the criteria are met, then the exception should be granted. He believed that all criteria had been met.

Mr. Horrigan agreed that the applicant had satisfied all of the criteria. There were questions raised by the Planning Department, and he still had concerns about the traffic safety issue. He said he reluctantly could not support the petition.

Chairman Leblanc had a question about Mr. Marchewka's comments. He did not think storm run-off was addressed. He said the water was being captured from the car wash. Mr. Marchewka agreed that what was what he referred to.

As a result of such consideration, it was voted 6-1 that the request be granted as presented and advertised, with Mr. Horrigan voting in the negative.

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9) Petition of **Forum Development, LLC, owner**, for property located at **Stonecroft Apartments off Lang Road** wherein the following were requested: 1) a Variance from Article III, Section 10-302(A) to allow the construction of a 35.5' x 48' (1,630.5 SF) one-story building with basement with a 10' right side yard where 25' is the minimum required, and 2) a Variance from Article II, Section 10-206 to allow said building to be used for a real estate management office in a district where such use is not allowed. Said property is shown on Assessor Plan 286 as Lot 24 and lies within the Garden Apartment and Mobile Home district. Case # 2-9

SPEAKING IN FAVOR OF THE PETITION

Mr. Peter Loughlin, representing Anders Albertson, addressed the Board. The property is located on Lang Road at the site of the Stonecroft Apartments. He said he submitted some photos and maps for the record. The site bounded on the west and south by general business zones including Ralph's Truck Sales. Diagonally across is an office research. To the east is a garden apartment/mobile home district. This is referred to as a residential area but the closest single-family residence is well over 1,000 feet away. On the reverse side of the exhibit he submitted, it shows the nature of the area fairly well. It is heavily developed with commercial pockets.

The area where the proposed building is located is in Stonecroft. and immediately to the east is Colonial Pines Apartments. Southeast from there is Beechstone, a very significant complex. Forum Development owns Stonecroft and Beechstone. Forum also manages Colonial Pines, where they currently have a management office of approximately 1,700 square feet. What Forum would like to do is to move its management office from Bow Street to the site. They would construct a one-story free-standing 40' by 32' building located between the Stonecroft and Beechstone on the property line. It would be barely visible from Lang Road. The request is for allowing the management office in this zone and for the setback. There would be a restriction that the office could only be used by the owner of the property. The office building would house Jim LaBrie, Anders Albertson, their assistant, and a receptionist. If they sold the properties, the use would still only be for the owner. The proposed site is the best location in order to service all three properties.

Mr. Loughlin said he did not see any public interest issue. He said this was one of the most high-density apartment areas in the City, and it was reasonable to have the management office in this location. Granting these variances would not diminish the value of surrounding properties. The abutters were Ralph's Truck Sales, an Irving station, and twenty acres of apartments.

Mr. Horrigan asked where the current management office for Stonecroft and Beechstone was located.

Mr. Anders Albertson of Forum Development LLC addressed the Board. In answer to Mr. Horrigan's question, he said there is a site office for the leasing people and rental manager that take care of the day-to-day operations. This is located in an apartment at the site, and it will remain there. The business management office is at 59 Bow Street. That is where Mr. Albertson, Mr. LaBrie, their assistant and bookkeeping functions are located. All financial and business transactions for Forum Development are handled at the Bow Street location.

Mr. Jousse commented that in looking at the map, it looked like the proposed building could be placed on a section of land to the left of the entrance, between Unit 14 and Lang Road. Mr. Albertson said the map did not show the topography. The area Mr. Jousse referred to was a very steep hill with an outcropping of ledge. The crest of that hill is the entrance to Stonecroft. It is not buildable.

The public hearing was closed.

DECISION OF THE BOARD

Mr. Horrigan moved that the petition be granted as advertised and presented with the stipulation that the use be limited to a real estate management office for Stonecroft, Beechstone, Colonial Pines developments or other properties owned by the management company. Mr. Jousse seconded the motion.

Mr. Horrigan said the public interest is clear. The apartment complexes would be well served by having their management office located on site. The unique nature of this specific property and the abutting properties would seem reasonable use of the land. Granting the variance would be keeping within the spirit of the ordinance. The setback consideration is okay due to the wooded area serving as screening and the fact that the abutting property is owned by the petitioner. He could not see any impact on the surrounding property.

Mr. Jousse agreed with Mr. Horrigan. Other possible locations for the building on the property would be limited by ledge or would not be central to the needs of the applicant. He agreed that the management office should be near where the properties are located. This would definitely benefit the tenants of the properties in question.

Mr. Parrott said as a general rule he did not think it was wise to introduce non-residential use into a residential area. If there were a hardship demonstrated, he thought that would outweigh the non-residential use. In this particular case he said he could see no hardship.

Chairman LeBlanc said he thought the purpose of this management office was to deal with contractors and people that are hired to do work there. He said the presentation given indicated that there was an on-site office for each of these sites to deal with the day-to-day operations, and this management building was not for this purpose. This was strictly for the business purposes of the corporation. Chairman LeBlanc said if the lots were sold, then the 10-foot side yard would interfere with someone's right. He thought the building could be moved into the property a little more or move a parking space or two. He thought there was an alternative way to put that building on the

site. He said it was essentially a real estate management office that they want to put in there. He said he could not support the motion.

Mr. Holloway said he could not support the motion. That complex has been there for many years. He said they used one of the apartments for an office, and he wondered why they could not convert another one of the apartments into their management office.

Discussion followed, and it was noted that a variance would still be required to convert an apartment into an office. No side yard setback would be required.

As a result of such consideration, it was voted 4-3 to grant the variances as advertised and presented with the following stipulation:

The new building to be used for a real estate management office for the Stonecroft, Beechstone, Colonial Pines developments or other properties owned by the management company.

Chairman LeBlanc, Mr. Holloway and Mr. Parrott voted in the negative.

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10) Petition of **The Children’s Museum of Portsmouth, owner**, for property located at **295 Woodbury Ave** and abutting lot on Woodbury Avenue; and The Hyder Irrevocable Trust of 1993, owner, for property located at 677 and 659 Dennett Street wherein a Variance from Article II, Section 10-206 is requested to allow the Children’s Museum and 1,000 sf of office space for the Hyder Children’s Foundation to be located in a district where such uses are not allowed. Said property is shown on Assessor Plan 161 as Lots 31 & 32 and Assessor Plan 175 as Lots 6 & 6A and lies within the General Residence A district. Case # 2-10

The Board tabled the application to the Board of Adjustment meeting on March 16, 2004.

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11) Petition of **Lafayette Plaza LLC, owner**, for property located **2454 Lafayette Road** wherein the following are requested: 1) a Special Exception as allowed in Article II, Section 10-208(36) is requested to allow 2,400± SF car wash in a district where such use is allowed by Special Exception, and 2) a Variance from Article III, Section 10-304(A) to allow a 75’ front yard where 105’ is the minimum required. Said property is shown on Assessor Plan 273 as Lot 3 and lies within the General Business district. Case # 2-11

The Board tabled the application to the Board of Adjustment meeting on March 16, 2004.

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12) Petition of **Robert J. Chaffee and Barbara A. Trimble, owners** for property located at **32 Miller Avenue** wherein the following are requested: 1) a Variance from Article III, Section 10-303(A) to allow the a 4,000± SF L-shaped building for four units on a 32,939 sf lot having an existing dwelling unit for a total of five dwelling units with 6,587.8 SF of lot area per dwelling where 7,500 SF of lot area is required per dwelling unit, and 2) a Variance from Article II, Section 10-207 to allow five dwelling units on a lot where the maximum allowed is four dwelling units.

Said property is shown on Assessor Plan 136 as Lot 18 and lies within the Mixed Residential Office district. Case # 2-12

The Board tabled the application to the Board of Adjustment meeting on March 16, 2004.

Mr. Machewka stepped down from the Board.

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13) Petition of **Robert Marchewka and Jennifer Crompton, owners**, for property located at **327 Sagamore Avenue** wherein a Variance from Article III, Section 10-302(A) was requested to allow an irregular shaped 205± SF deck with a 2.5+’ rear yard where 30’ is the minimum required. Said property is shown on Assessor Plan 222 as Lot 27 and lies within the General Residence A district. Case # 2-13

SPEAKING IN FAVOR OF THE PETITION

Mr. Robert Marchewka, representing himself and his wife, addressed the Board. Giving a little background, Mr. Marchewka said they received a variance to tear down and rebuild an old garage in 2001. The old garage was close to the rear property line and they kept the same footprint and extended it out and doubled it in size but no closer to the rear property line.

They have plans now to expand the main part of the house. All of the house expansion is well within the setbacks, and the relief he requested was for a deck and stairs to the rear of the property. He said they should have dealt with the stairs previously during the last variance request, but it never occurred to him. The former garage was on ground level with the back entrance. When it was rebuilt, there are now 3 or 4 steps coming up to a door. He does not have access to that back door without a variance. In the scheme of things, as the house is renovated, he would like to add on to an existing deck and back entrance so they could enter the garage area from the rear and walk around to the back door of the main house. It is squaring off the deck. There are no plans to turn that into living space. The property is odd shaped. At one time it was conforming. It looks like someone carved out a piece and built a house right next to it some 40 years ago.

He spoke to the neighbor directly behind him, who would be the only one affected. That neighbor had no objection to the plan. He could not see that it would have any effect on the neighborhood. The effect it would have on him would be to allow access to the house in a non-convoluted way from the rear of the property. The deck is a very small area of 81 square feet on the plan.

Chairman LeBlanc asked if the stairs coming off the deck and going toward the street would be along the side of the garage. Mr. Marchewka said yes. Chairman LeBlanc inquired if that was 2 ½ feet from the property line. Mr. Marchewka said that was what was presented on the plan, but it was more than that. Chairman LeBlanc asked if the neighbor’s garage was on the property line, and Mr. Marchewka said it was 8 to 10 feet back.

Mr. Parrott inquired what was the building on the neighbor’s property closest to the area in question. Mr. Marchewka said it was the garage. That garage is elevated 4 feet from his yard. There is a retaining wall on the property line. He asked how far was the neighbor’s garage was from the common property line, and Mr. Marchewka said 15 feet.

The public hearing was closed.

DECISION OF THE BOARD

Mr. Parrott made a motion to grant the petition as advertised and presented with the stipulation that the proposed deck shall remain open to the sky. Mr. Horrigan seconded the motion.

Mr. Parrott stated that it was a small request and it only affected one property. He could not see that the variance would be contrary to the public interest. Due to the configuration of the property as it existed there was no other choice of access other than that one. There was no objection to the plan from abutting owners. The requested variance is consistent with the spirit of the ordinance in that it allows people to use their property as they see fit. It is a safety consideration to provide a means of access and egress from the house. The variance will not diminish the value of surrounding properties. The deck would not even be seen from the abutter's house as it would back up to a garage.

Mr. Horrigan said that 75% of the deck did not violate the 30' setback requirement so it was only a very small portion of the deck involving a few feet. He said he thought it was in the public interest to encourage homeowners to have deck access to their houses given the nature of winter in New Hampshire. This is a very reasonable proposal given the pre-existing location of the house on the lot and the strange shape of the lot.

As a result of such consideration, it was unanimously voted to grant the petition as advertised and presented with the stipulation:

The proposed deck shall remain open to the sky.

ADJOURNMENT

Upon motion made by Mr. Jousse and seconded by Mr. Holloway, the meeting adjourned at 9:25 p.m.

Respectfully submitted,

Mary Ann Brown
Acting Secretary

These Minutes were approved as presented at the Board of Adjustment Meeting on February 15, 2005.

Mary E. Koepenick
Secretary