

**MINUTES OF SPECIAL BOARD OF ADJUSTMENT MEETING
CHILDRENS MUSEUM OF PORTSMOUTH
PORTSMOUTH, NEW HAMPSHIRE
CITY COUNCIL CHAMBERS**

7:00 P.M.

APRIL 21, 2004

MEMBERS PRESENT: Chairman, Charles Le Blanc; Vice-Chairman James Horrigan; Nate Holloway, David Witham, Arthur Parrott, Alternate Steven Berg and Alternate Duncan MacCallum

MEMBERS EXCUSED: Alain Jousse, Bob Marchewka

ALSO PRESENT: Lucy Tillman, Planner

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**I. PUBLIC HEARING**

**A)** 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 was requested to allow the Childrens 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

**SPEAKING IN FAVOR OF THE PETITION**

Attorney Bernard Pelech, representing the Children’s Museum of Portsmouth, applicant and property owner. He stated for the record that at the time the petition was filed, the Hyder brothers still owned two of the parcels of land; however, all of the parcels of land had officially been conveyed/donated to the Children’s Museum by the Hyder brothers.

As a preliminary matter, Attorney Pelech felt that Board member MacCallum should recuse himself due to a past attorney/client relationship with one of the most vocal opponents of the Children’s Museum, Lenore Bronson. Attorney Pelech felt that since Board member MacCallum had represented her in the past, he would fail to meet the standards as required by the courts.

Chairman LeBlanc asked Board member MacCallum if he felt he would be able to be impartial in this particular case, and Mr. MacCallum answered in the positive.

The Chair asked Mr. MacCallum if his relationship with Lenore Bronson would influence him in any way in the deliberations. Mr. LeBlanc asked if anyone from the Board had any objections to Mr. MacCallum’s sitting on the Board for this hearing. Hearing no objections, Mr. MacCallum was allowed to sit in on the issue.

Attorney Pelech asked that his objection be noted.

Attorney Pelech referred to the materials he had submitted, including the traffic study and introduced Mr. Joe Lawry, who had done the traffic study; Paul Banachi, Architect from AIQ; Henry Hyder of the Hyder Brothers Charitable Foundation; and Denise Doleac, Executive Director of the Children's Museum.

He went on to describe the four lots at the intersection of Woodbury Avenue and Dennett Street. He stated that they were surrounded by four public streets, Bartlett Street, Dennett Street, Woodbury Avenue and Route 1 Bypass. The site is approximately 1.1 acres and has access on Dennett Street, Bartlett Street and Woodbury Avenue. The site is located in a GRA district. He stated that a vacant dwelling currently sat on lot 32. He stated that surrounding uses were both residential and heavy commercial and that the 4 lots were given to the Children's Museum by the Hyder Brothers Charitable Foundation on the condition that the Children's Museum make application to the necessary Boards of the City of Portsmouth by September 1, 2004.

Further agreement was entered into between the Hyder Brothers and the Children's Museum. The Children's Museum would agree to provide 1,000 square feet of personal office space at the end of the new museum building on the corner of Dennett and Bartlett Streets, which would be occupied by the Hyder Brothers Charitable Foundation only, a non-profit organization established in 1994.

He stated that the Hyder Brothers have no interest in any type of business office, other than the Charitable Foundation, at this location, and the agreement states that the office space can only be used on an occasional basis and only by the Charitable Foundation.

He stated that in the early 1980's he was hired by the Hyder Brothers regarding the demolition of the houses on the lot, which were becoming an eyesore. The neighborhood came out in great numbers to oppose the demolition, and the buildings sat there for 15 years. The property is worth half a million dollars, and the Hyder Brothers have donated it to the Children's Museum.

The museum would consist of four houses, interconnected by walkways, and each would be approximately a 2,000-square-foot footprint. The intent was to keep the structures a reasonable size and thus in keeping with the neighborhood. He stated that the architects took great pains to provide a transition between the commercial uses on two sides and the residential uses. The intent was also to keep the access way as far away from the residential neighborhood as possible. He stated that the access way would be a signalized intersection, lining up with the US Route 1 Bypass off ramp. He stated that traffic engineers would confirm that 85% to 90% of the visitors would come through that intersection, and 10% to 11% would come through Portsmouth. Traffic would not spill into the neighborhood.

He stated that the only public access would be from that intersection. Gated emergency access would be provided at Bartlett Street.

Attorney Pelech stated that the proposal met all the requirements of the ordinance in terms of front, rear and side setbacks, lot coverage, green space, parking, access ways and building height. The only variance being requested was a use variance.

Attorney Pelech presented the five criteria in support of granting the variance. He stated that special conditions existed in the setting of the property, as it was not the typical residential district. It is

surrounded on four sides by public highways. He stated that the property was not suitable for residential use due to the fact that it sits across from a Holiday Inn and has the US Route 1 bypass in its back yard. He stated that abutters had complained about the noise, fumes, and truck traffic in the past.

Attorney Pelech stated that the restriction as applied by the Ordinance does interfere with the reasonable use of the property in that the proposal would be for transitional use which would not be intense. The museum would be open from 10 a.m. to 5 p.m., five days a week and 1 p.m. to 5 p.m. on Sundays. Given the size of the lot and the fact that it is surrounded on four sides by public streets, he felt that it was a reasonable use of the property.

He stated that the site layout and the signalized intersection would be of great benefit to the neighborhood by eliminating the difficulty turning left or right on to Woodbury Avenue.

Attorney Pelech felt that there was a fair and substantial relationship between the general purpose of the Zoning Ordinance and specific restriction on the property. He read from the Zoning Ordinance and stated that the Children's Museum would not result in increased congestion on the streets or increased possibility of fire, panic or other dangers. He stated that the museum would not deter in any way from the general welfare of the populace.

He stated that the Children's Museum opened in 1983 and served 64,000 visitors on-site in 2002-03, they are involved in outreach programs, work with the schools and are a benefit to the cultural well-being for the City.

He stated that allowing the Children's Museum to be located at this site with a signalized intersection and bypass off-ramp would facilitate added provision of transportation. It would not adversely affect the City's ability to provide water, sewer, schools, parks and other public requirements. It is an appropriate use of the land.

Attorney Pelech stated that the public or private rights would not be affected. He stated that part of the proposal would be to create a public park for the children. It would be open and free to all the people in the neighborhood. He stated that if it was felt that the park was an imposition by the abutters, the applicant was willing to fence in the park. They would defer to the abutters' wishes.

Attorney Pelech stated that the applicants for the Children's Museum had had numerous meetings with both opponents and proponents from the neighborhood. The basis of the opposition was that the museum would create traffic congestion and diminish the property values. He stated that the traffic study indicated that the signalized intersection would actually improve the present situation.

He stated that the museum buildings would not be out of character or scale for the neighborhood and would act as a buffer between the residential neighborhood and the Route 1 bypass and the traffic circle. He reiterated that the use of these lots for the Children's Museum would not increase traffic congestion in the neighborhood, per the traffic study done by engineers. He stated that the parking would be sufficient to accommodate the visitors to the museum and that it was in compliance with the zoning ordinance. He stated that the museum had the ability to limit the number of buses coming to the area in one day. They also have the ability to park busses off-site so that there would not be more than one bus on-site at a time. The outdoor exhibit area would be used seasonally, and children will not be roaming the neighborhood. He stated that children under 12 years of age cannot go to the museum unless they are accompanied by an adult.

He stated that granting the Variance would result in substantial justice being done. He recognized that there were opponents to the request within the neighborhood but felt that the benefit to the general public would outweigh any injury to the public. He stated that the proposed location would offer better accessibility to school groups and visitors.

Attorney Pelech stated that the new building would be more code-compliant than the existing building, and it would allow the museum to provide more services to the children of the City of Portsmouth, which would benefit the public interest.

He stated that it would be a hardship on the owner if the variance were denied, since the land had been gifted to the Children's Museum, and it would be in jeopardy if the museum were not granted the approvals necessary to be located on this site. He stated that there would be no benefit to the general public in denying the variance and that substantial justice would be done in granting the variance.

Granting the ordinance would not be contrary to the spirit and intent of the ordinance. He felt that there was cultural benefit to the city and the fact that it would not result in overcrowding or traffic congestion. He stated that if the general purpose of the ordinance were applied to this property, which is on the edge of a commercial and residential area, it would not be contrary to the spirit and intent of the ordinance.

Attorney Pelech stated that granting the variance would not be contrary to the public interest. The Children's Museum will be more accessible to the residents of the City, and visitors to the City will also be able to locate the museum. It would be an improvement over the present situation and enhance a gateway to the city. There would be no added demand on City services or create an increase in traffic. The intersection would become signalized and traffic speeds on Woodbury Avenue would be reduced.

Paul Banachi, Architect from AIQ, presented a few additional points to the Board. He described the streetscape that would result from the design of the Children's Museum buildings as individual "homes." He stated that the site and building design could be used as teaching tools within the context of the museum in terms of the energy-efficient and environmental design. He also mentioned that the landscaping would also act as a buffer for the neighborhood.

In response to questioning from Mr. Horrigan, Mr. Banachi stated that they were considering a permeable paving service and shielded lighting. He also stated that the parking lots could be gated to prevent over-flow parking from hotels.

Mr. Halloway addressed the architect regarding the office space that would be located in Building A and the fact that there would be a shared 400-square-foot conference room. The architect also stated that the screen down Bartlett Street would most likely be a landscape screen as opposed to a fence.

Mr. Parrott clarified that some of the trees in the buffer will have to be removed and new ones planted, Mr. Banachi agreed with the assessment.

Mr. Horrigan questioned Attorney Pelech regarding the argument for hardship, stating that there were four city blocks that were in the same environment. Mr. Pelech stated that the property in question is

located at the corner of a residential district and has the impediment of the bypass and Woodbury Avenue.

Attorney Pelech also stated that if they passed Board of Adjustment and Site Review, they would seek a work session with the Historic District Commission to satisfy any concerns of abutters.

Joseph Lowry, Traffic Engineer with Louis Berger Group, Manchester, NH. He stated that he had met with the City of Portsmouth Traffic Engineering and the Department of Transportation and went on to describe in detail the study that was conducted by the Louis Berger Group. The study was submitted for the record. There was a lengthy discussion of the study and the various Board members asked questions to clarify their understanding of the traffic impact on the area.

Mr. Parrott questioned whether studies had shown how many of the proposed 43 parking spaces would be occupied on a given day. Mr. Banachi was unable to answer that question.

Mr. Witham referred to page 28 of the traffic study and questioned locations of proposed driveways. He asked if the study had indicated the overall impact that would be felt on the neighborhood as a result of the traffic study. Mr. Banachi stated that the actual distribution of vehicles from the Children's Museum would create a very small percentage of cars on Dennett Street and that the overall effect to the neighborhood would be minimal.

Attorney Pelech introduced Mr. Vern Gardner, an appraiser for 34 years and working in Portsmouth for 22 years. He was contracted by the Children's Museum to determine whether or not abutting properties would be adversely effected by the placement of the museum in the neighborhood. He concluded that they would not be adversely affected. He referred to the values of homes that presently abut the Children's Museum in the South End, and noted that they had increased in value. He made several other comparisons regarding the value of properties in other areas of the City and concluded that the neighborhood would not be adversely effected by the proximity of the museum.

Mr. Berg questioned Mr. Gardner's credentials. Mr. Gardner stated that he had the highest known appraisal designation, MAI. He explained that this designation instructs repeatedly to render an unbiased review. He stated that if someone were to direct the appraiser in a conclusion, the appraiser is obligated to refute that or even identify the client.

Mr. Berg further questioned Mr. Gardner regarding his opinion of how a prospective buyer would view a child-oriented and family-oriented facility located in a residential neighborhood. Would the buyer see it as a good thing or a bad thing? Mr. Gardner reiterated that he does not believe the neighborhood would be adversely affected. In fact, he said this is currently a "demand cycle" in real estate sales, and the presence of a children's museum in the neighborhood could have an uplifting effect on a potential buyer. Property values in the south end have increased more rapidly. Mr. Gardner compared this neighborhood to the Dondero School area. He said that traffic was heavy, but property values were not affected and remained consistent with those of broader New Hampshire sales.

Mr. Horrigan referred to the two homes on the extension of Bartlett Street and the negative impact that they could suffer in terms of diminution. They are tasteful homes and are well maintained. If the museum were there, the view from the front porch of one or both of these homes would be looking at institutional-size buildings and a busy parking lot. This is certainly an altered view. Mr. Gardner cited the example of a home that was located behind the Howard Johnson's which had sold in 2001 for

\$213,000, and it had not been impacted by its proximity to the hotel. He felt that the two houses on Bartlett Street would not be adversely affected by the presence of the museum.

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

Attorney Pelech read a letter in favor of the petition from Bill and Susan Mansfield of 12 South Street, and submitted it for the record.

Mr. Anthony Copiello of 341 Dennett Street said he did not have an opinion either way as to whether the museum went in or not. He made an observation that the traffic study had been done in October, when Portsmouth is a tourist town. There is much more traffic during the summer months. He questioned the traffic study in terms of the 10% to 11% of visitors coming from Portsmouth, stating that he found that number to be very small.

Joanne McNulty of 416 Dennett Street expressed her full support of the Children's Museum. She read and submitted a letter of support to be made part of the record. She did express some concern about the traffic at that corner and said she hoped a traffic study would be undertaken by the City.

Margaret Sophia of 294 Marcy Street addressed the Board. She is a direct abutter of the Children's Museum. She came tonight to speak of her wonderful neighbors. The building and landscaping are always well kept. The parking area is clean. The people who visit are parents and small children, and it is always a pleasure to see them. It is not a rowdy crowd. It is also a pleasure to see the little children getting off the school buses to visit the museum. It is a very positive experience to have them next door, and she would be happy to have them stay.

Chris Serlin of 89 Sparhawk Street said he and his wife have lived in the neighborhood for 3 ½ years and are here in support of the museum. One of the qualities of living in this town is the fact that it is a "walking town," and people can walk to cultural events and activities. The City has traffic concerns regardless of this museum or any other institution. The traffic numbers associated with the museum are very minimal. Sooner or later a traffic signal will have to come in. He sees the museum as a better alternative to a vacant lot, with an unknown future use that could be far worse than the museum as a neighbor.

Steve Pesci of 200 Thornton Street, about three blocks from the Children's Museum, voiced his support. He was a neighbor of the existing museum site for 11 years, living approximately 100 feet from the front door. The museum was the best neighbor one could hope for. It was a strong force in the neighborhood and provided amenities for the neighbors. He sees this as a cultural center that the neighborhood currently lacks. He has been an urban planner for the past 17 years and has taken a great interest in the traffic impact statement. Traffic on Woodbury Avenue has been a chronic problem. The traffic impact of the museum would be minimal, 5% to 10%. A traffic signal would greatly improve pedestrian and bicycle safety of that area. He could see the lot in question coming up for a variance in the future than could be far more negative on the neighborhood than the museum would be. He encouraged the Board to grant the variance requested.

David Adams, a Portsmouth resident for 16 years and a Dennett Street resident for the past 8 years, spoke in support of the Children's Museum. Having lived in both areas, he thought the Children's Museum would be a great addition to the area and a conscientious and courteous neighbor. Looking into the future, he has concerns that as the City grows, the traffic problems created by the expansion of

hotels downtown and around the Parade Mall will have a far greater impact than anything generated by the Children's Museum.

Wendy Dillon, a current resident of Eliot, Maine, but a former resident at 59 Manning Street for five years, said she was here on behalf of herself, her husband, and their two children. She said she used to live right behind the Children's Museum. The South End is very tight with very little parking or driveways. The museum was a wonderful neighbor. They allowed neighbors to park on museum property overnight. Most of the visitors to the museum were from out of state.

Robert Padian of 312 Cabot Street addressed the Board. He lives less than a mile away and passes by the property every day. Traffic is not a significant issue. The museum is not in the middle of the site, it is on the corner. There is a 60-year-old highway next to the property. He thinks it is highly unlikely anyone would want to build residential on that site. The Children's Museum in that location would be a real improvement over what that site looks like now. He thinks the City should do anything necessary to put the Children's Museum site. It would be a glorious addition to the area.

Paul McEachern, a lifetime resident of the neighborhood, spoke in favor of the Children's Museum. He said his 5 children all grew up in the neighborhood, and he has 4 grandchildren who live in the neighborhood. He said today's zoning attempts to sanitize the residential zone. There used to be four or five grocery stores in the neighborhood. Now there are none. Grocery stores and schools are not allowed. The New Franklin School, where his children went to school, would not be allowed under today's ordinances. The zoning does not allow a cultural masterpiece in a residential neighborhood, which does not make sense to him. The museum would do more to protect the neighborhood than anything else. The property will not stay a vacant lot forever. Regardless of the zoning ordinances, the pressure will always be there to build another hotel or commercial endeavor. This is an opportunity to preserve the neighborhood. The museum is a proven winner. It is a wonderful benefit for all the children in the neighborhood and for the community.

Martin Ryan of 221 Woodbury Avenue, four houses down from the site, spoke in favor of the project. He has spoken to the leadership of the Children's Museum, and they are very receptive to the concerns of the neighborhood. Traffic is a huge concern, and he would hope that the museum would serve as a catalyst for changing the neighborhood and making it much more pedestrian in nature.

Joe Paquette of 79 Thornton Street spoke in favor of the variance. He was in favor of the light being placed at Woodbury. It would be a great catalyst for change at that busy intersection. It would be good for the children in the neighborhood. The Children's Museum would present events on weekends that the children could attend right in the neighborhood.

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

Steve North of 38 Dennett Street addressed the Board. He said he had lived in the neighborhood for 8 years. This is not about the museum. It is a great institution. However, non-profits have to make a profit. They are a business and need to make money to survive. His concern is what if the museum is not the proper place for them, it does not work out for them, and they decide to move to another site that is more suitable. He has a major concern about what happens to the site then. They could sell the property and make a profit. It is their asset. They can take the proceeds and purchase another property elsewhere. He said this building is now in his neighborhood. Could it become an office park? The

neighborhood has been eroded on its edges. It is a terrible traffic area, it always has been, and it will continue to be. There are valid concerns about a traffic light being placed where it is proposed.

The Board asked Mr. North if he would feel better about this proposal if there was some kind of assurance that this property could never become an office park. Mr. North said he would, but it is a very complicated issue.

He is not sure how those assurances would be done. He has a real concern that office use could be permitted. Once it is there, it is there. He hopes the issue gets due diligence.

Tylene Jousse of 197 Dennett Street said she wanted to thank the Children's Museum for including her neighbors and herself in all aspects of this project. She said she had mailed information to the Board, but she also wanted to include some information to be handed out this evening and made a part of the record. She submitted statistics in regard to traffic accidents, parking spaces, signage, and emissions from traffic. She also submitted her notes from the Children's Museum meeting held in January.

Bob Shouse of 505 Dennett Street spoke in opposition to the proposed variance. His opposition has nothing to do with Children's Museum, which he said is a true asset to the community. The issue is requesting a variance for non-permitted use in a residential area. He could not see that the hardship criteria was met. The houses in question at one time were very nice, but over time the landlord failed to keep the property up and fell into disrepair. Just because this lot is in the upper right hand corner of the zone where it is bordered by hotels and the bypass, etc., there is no good reason to let it become commercial. The zoning ordinances were designed to protect the character of the neighborhood. The property values in this neighborhood are good, and the museum would not cause them to diminish. There are other places the museum could go. Another concern is what if the Children's Museum did go in there and for some reason left. Families have lived in that site forever, and it still could be residential. To allow this building would change the character of the neighborhood, and this should be preserved.

Nancy Johnson of 81 Clinton Street said she has been a strong supporter of the CM since it opened, and she has nothing against the Children's Museum. The property in question was residential with three houses, one of which could have been beautiful. Its identical twin is directly across the street. In the 1980's the neighborhood tried very hard to get the owners to fix it up but with no success. It is zoned residential, and she would like to keep it residential.

Some people tried to buy the houses over time, but they were not for sale. She said the Hyder Trust should have given the property to the Housing Partnership or Habitat for Humanity, She has concerns about the traffic light impeding traffic out of the Franklin School, traffic blocking the I-95 entrance, traffic blocking Dennett Street, and an increase in overall traffic. She is also concerned about the two houses on the dead end of Bartlett Street having their values seriously impacted. Looking out at a parking lot would definitely affect their quality of life.

John Savramis of 117 Woodbury Avenue said he had two major concerns. One is the traffic. Traffic studies have said there would be no impact, but he has lived there for twelve years, and he said any additional traffic is already too much. The excessive speed of traffic on Woodbury Avenue is an ongoing issue with the Police. The other issue is the mixed use encroaching on a residential neighborhood. He spoke with the principal of the Franklin School, where his daughter goes to school. She said the Children's Museum would be a real asset to the neighborhood and to the educational process, but it would not be safe for children to walk that short distance with the traffic.



Mary Driscoll lives at 325 Thornton Street, which is a block away from the location under discussion. She has nothing against the Children's Museum. It's the location. The traffic is heavy morning, noon, and night. It is not just cars, but it is a major truck route. People have no idea what it is like. It is unbelievable.

Astrid Weisbacher of 28 Dennett Street said she had lived there for 20 years. She said that the east end of Dennett Street is just 28 feet wide made into two lanes. It is a very busy corner. In a one block radius there are 46 exits and entrances. The traffic is unbelievable. The safety of children and adults is a concern. Dennett Street has been used as a cut through between Maplewood and Woodbury for many years. She anticipates the traffic would increase even more with the museum. Proposed parking will be insufficient to accommodate all the cars and buses. She is also concerned about added air pollution and the children at the nearby playground being affected. The architect has rendered a building plan that is residential in style, but she does not believe this is consistent with a residential neighborhood.

Bruce Osborne of 2 Echo Avenue said he used to live at 27 Woodbury Avenue, which is one block from the proposed building. He does not think that is a good place for the museum. He would rather see housing for the elderly. The traffic there is unbelievable. A traffic light would not do any good. It would just block traffic more than it already is.

Lenore Weiss Bronson of 828 Woodbury Avenue said she has lived there for 18 years. She said that only 12% of the visitors to the museum are from Portsmouth, but 100% of the abutters and neighbors will be affected. In looking at the Portsmouth zoning ordinances, she quoted "designed to lessen congestion to the streets." There is a big problem with congestion created by overflow parking on the streets from the Holiday Inn. Tractor-trailer rigs tie up traffic trying to negotiate the corner. A traffic light would back up traffic in the neighborhood. Air pollution is an obvious health concern with an increase in traffic. This is a high traffic, high speed area. The Children's Museum is a wonderful organization, but this is not the right location for it.

Peter Bresciano lives at 101 O'Leary Place, which is on the other side of the highway from the proposed site. Portsmouth is the "city of the open door." Not many local residents visit the Children's Museum, but 88% of visitors are from out of town. If the museum goes into the proposed site, there will be an increase in traffic through the neighborhood. Parking overflowing into the neighborhood is going to be a problem. From a tax point of view, the City will gain more in taxes from a residential property than from a non-profit. He thinks the pedestrian crossing at that intersection will be extremely dangerous. He foresees an increase in traffic on Woodbury Avenue.

Tammy Byron of 633 Dennett Street, said her property is the closest neighbor to the proposed site. She said she is not opposed to the museum, but impact on her property value is a major concern. In regard to adverse effects, she said she spent several hours picking up debris and trash. It is a huge problem. She would rather look at the Children's Museum than what the property looks like now. She has concerns about the Hyder Brothers having an office in the space. She said they have allowed their existing property to go into great disrepair. She knows people who have tried to buy the property in the past, and they have refused to sell. She expressed great concern over what would happen to the property if the museum left for some reason and the Hyder Brothers had control of the property.

Alan Jousse of 197 Dennett Street said he had nothing against the Children's Museum, and he commended everyone, either for or against the proposal, who had appeared before the Board tonight. This is a use that has no hardship, and no hardship has been demonstrated. The museum has a home for which they pay the City \$1 per year. Granting this variance would not be in the best interests of the City or the citizens of Portsmouth as it would remove four parcels of land from the tax roll at \$9,000 per year for the land only. If there were three duplexes on the property, that would be an additional \$22,000 per year in tax revenue to the City lost forever. He expressed concern about what would happen to the building if the variance were granted and the museum were to move out at some future time. He wondered if the building would revert back to the Hyder Brothers, and what would they do to the building. He said this would not benefit the people of Portsmouth or outside visitors, who would not experience the quaintness of the old Portsmouth. The applicant has not demonstrated any hardship for change of use in this parcel, and this application should be denied.

George Dempsey of 42 Dennett Street said he had mixed emotions, recognizing that the Children's Museum is a very positive thing to have in the community. Like everyone else appearing tonight, he had traffic concerns. Putting up one light is not a solution. If the variance is approved, the people and traffic will come. He said if this were allowed, he would ask that no overnight parking be allowed and that the parking lot be gated to eliminate overload parking from hotels in the area. He questioned why the Hyder Brothers needed an office space of 1,000 square feet in this building. HVAC units run all night and are noisy. More vehicles coming into the neighborhood will only add to the dust and black soot that already is a problem. He does not want to see a contemporary property on Dennett Street. It needs to conform to the existing historical neighborhood.

Chairman LeBlanc stated that there were several letters from people who wished to express their opinions but were unable to attend the meeting tonight. He said these letters would be circulated to the Board and made a part hereof.

Chairman LeBlanc called upon Mr. Pelech to give a brief rebuttal.

Mr. Pelech said he had no problem with any of the stipulations or caveats proposed. In listening to the many speakers, he realized that one of the biggest concerns was traffic. The complaint is more about what is there now rather than what is going to be there. This concern is the easiest to deal with. As far as the 1,000 square feet of office space, that includes restroom facilities, reception area, and two offices.

Mr. Henry Hyder of the Hyder Brothers Charitable Foundation Trust and Denise Doleac of the Children's Museum were both present. The fact that they have engaged the services of people to speak on their behalf certainly should not be held against them or the fact that they do not want to speak for themselves.

In conclusion, this is a unique piece of property surrounded by highways. He emphasized that signage tells trucks that they must go via the truck route, and it is required by law.

The public hearing was closed.

Mr. MacCallum stated he had a preliminary matter. In response to Mr. Pelech's motion, in which he had originally refused to disqualify himself, he said he felt it was in everyone's best interest that he did so now.

Mr. Witham said he wished Mr. MacCallum would reconsider. This is a very important matter, and he would hate to see it come to a 3 to 3 vote. Mr. Parrott said he agreed with Mr. Witham. Mr. Parrott said he had once been challenged in the past on flimsy grounds, and he could understand Mr. MacCallum's decision to step down. However, he would also like Mr. MacCallum to reconsider. Mr. Horrigan said he would like it to be noted that he agreed with the remarks made by Mr. Witham and Mr. Parrott.

Mr. Witham said he had a question for Mr. Pelech in regard to substantial justice to the owner. At this point the Children's Museum is considered the owner. They have title to something they cannot legally use. By making their application to the Board, they have a free and clear title. This property goes back to the Hyder Brothers Charitable Foundation if the property is not approved for a use as the Children's Museum.

Mr. Horrigan asked Mr. Pelech if he would consider an additional stipulation up front that the petitioner negotiate a screening and/or vegetation agreeable to the two abutters on Bartlett Street. Mr. Pelech said he agreed with the concerns. Mr. Horrigan said he knew this would be addressed by the Planning Board, but he wanted to establish this now. Mr. Pelech said he had no problem with working both with the Site Review Committee and the property owners to come up with something satisfactory.

## **DECISION OF THE BOARD**

Mr. Horrigan made a motion to grant the petition as advertised and presented. Mr. Berg seconded the motion.

Mr. Horrigan said he understood all the issues, and most of them have to do with traffic. Nonetheless, the Board must rely on the criteria. As he sees it, hardship is the real question. No one is questioning the public interest and the other issues connected with the contribution of the Children's Museum to the community.

The issue is whether it is a hardship to deny the landowner this use of property. As long as they can establish that it is a reasonable use and that the property is in a unique setting in its environment, then the Board has to grant. Definitely it is a unique piece of property. It is surrounded on three sides by commercial property and a busy bypass. It is also a corner intersection for a truck route. This is clearly a piece of property that in 2004 would be extremely difficult to develop as a residential site. This landowner has a perfect right to come to the Board and say they have a use that is just as good, perhaps even better, and it is a reasonable use. He said he thought they passed the hardship test. There is no fair substantial reason that the zoning ordinance intended this restriction on the property or that it would not allow this institution to locate there.

There are some private and public issues here. That seems to center on the traffic. There has been lots of testimony on that from both sides as well as professional testimony. The evidence seems to be that the traffic can be handled with an appropriate traffic light. That is not the job of this Board to get into the actual details of this proposal as that will go to the Planning Board and the Traffic and Safety Committee. He said he is convinced the general traffic problem can be dealt with by careful planning.

He said is not entirely comfortable making this motion, but he thinks the criteria have been met. The public interest has been resolved. He feels the criteria for the hardship test have been met. The

substantial justice issue has not arisen. The property value issues have been thoroughly examined, and there is no negative impact on surrounding properties.

He would like to stipulate:

- 1) That there be no overnight parking in a gated parking lot.
- 2) That both entrances be gated.
- 3) That vegetative screening and/or fencing be negotiated with the two abutting property owners on Bartlett Street.
- 4) That all future use changes must come back to this Board.
- 5) That an advisory session be held with HDC in regard to exterior.

Mr. Berg agreed with Mr. Horrigan that all points had been met. What he wished to elaborate on was the fact that the biggest objection was to the traffic situation. There are 1,000 cars a day on Woodbury Avenue. This is a growing city, and traffic is a problem. The way to handle traffic is to manage the growth and manage the traffic. The two experts tonight gave no evidence to the contrary. The other issue is property values. There is no doubt in his mind that people in the future will be attracted to the neighborhood because the Children's Museum is located there, The number of cars parked would not be a factor. He sees a well-designed building and stipulations to protect the abutters as a good thing. He said he supported the motion.

Mr. Holloway asked Mr. Pelech if the State had approved the traffic light yet. Mr. Pelech responded that it was still too early in the process.

Mr. Holloway said he could not support the motion. He knows it is a heavily traveled area as his granddaughter attends the New Franklin School. He said people do not stop at that stop sign so he questions that they would stop for a traffic light. He also said that granting the variance would change the character of the existing neighborhood. Particularly, the museum building would not conform to the other buildings in the residential area. Therefore, he could not support the motion.

Mr. Witham said he would support the motion. He had some concerns about traffic, but his concerns were alleviated by the traffic expert's study. He still has some concern over the traffic signal, but he said he would leave that up to the professionals to make certain it works right. He said he thought the streets could handle the traffic. One issue he wrestled with was the change of use in a residential area. He thought it was a very unique spot considering how it is bordered. The design is very well thought out with good placement. Considering that 88% of the visitors are from outside Portsmouth, the location is good with the access ways close by. For those reasons, he said he supported the motion.

Mr. Parrott said he came into the meeting pretty much in favor of the proposal. However, after hearing the testimony from those in favor, he came to the realization that those people were more in favor of the Children's Museum itself than the location issue. The museum is a wonderful organization. That is not the issue. The question became, should the zoning ordinance be changed to allow a non-profit museum in the MRO district.

However, when the ordinance was written, it was stated that museums should be on 2 acres of land. This lot is only an acre and a half. That is probably the reason for the concern about the 43 parking spaces being enough.

Also, the traffic study was well done, but all traffic studies are “a snapshot in time.” Most people do not study traffic. They live in it, and they drive in it every day. He also felt very strongly about maintaining the integrity of zoning. In this particular case, this zone does permit multi-family housing. Often it is heard that the City is not building enough housing. This is an area where it is feasible to building housing. Houses have been there and have been demolished. Putting a museum in this residential zone is directly contrary to the City’s interests in generating housing for its citizens. The argument that the museum could become a neighborhood attraction is valid. However, if the museum closes down early, everyone goes home so it is not a neighborhood club or hangout of that sort, and statistics show that 88% of the people are from out of town. He said when he looks at a vacant lot, he cannot visualize hardship. The organization now is functioning very successfully where it is. While the prospect of this new location would be attractive to a museum, the testimony given tonight would seem to be evidence that it is not the right place. There is a hardship inherent in this land introducing a non-residential use in a residential zone. Finally, as the last speaker mentioned, 1,000 square feet for a part-time office seemed excessive.

Chairman LeBlanc said that he could not support this motion. He said he agreed with Mr. Horrigan that the hardship may be met. However, there is a five-part test that must be met. He did not think the request was consistent with the spirit of the ordinance. The ordinance refers to “reducing congestion” and keeping neighborhoods the way they are so they are consistent. The museum is a wonderful organization and does a great service to the city. However, in this case it really does not belong on this lot. It is too big to go into that lot. By granting this variance, justice would not be done to the people who live in that neighborhood.

With a vote of 3 to 3, the motion to grant failed.

#### ADJOURNMENT

Upon motion duly made and seconded, the meeting adjourned at 11:12 p.m. Ms. Tillman reminded Board members to pick up PSNH packets and sign off as received.

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