

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

7:00 P.M.

CITY COUNCIL CHAMBERS

MAY 18, 2004

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

MEMBERS EXCUSED: Bob Marchewka,

ALSO PRESENT: Lucy Tillman, Planner

TIME-SENSITIVE ISSUE

Chairman LeBlanc announced that there were no minutes to approve, but there was a time-sensitive issue regarding the PSNH request that is still before the Board for next month. He said he would give the Board five minutes to read the proposal submitted by the opponent to the request and the applicant themselves. He said Mr. Holden would speak for the Planning Department.

The meeting reconvened at 7:05 p.m..

Mr. Holden said the Board had before it a request that has been submitted on the part of abutters to the PSNH project site. The Board also has a rebuttal to that request which has been filed by the attorney for PSNH. One request is made by Attorney McNeil, and the rebuttal to that request is made by Attorney Ciandella.. The Department suggests that while these are not requests for re-hearing, the process to be followed is similar to that. What that means is the Board has in front of it all the information needed to essentially vote the request up or down.

Mr. Holden presented some background on how this issue reached this point. The PSNH original building permit change of use application has been deemed by the City to be of regional significance both by this Board and by the Planning Board. Parties to a regional impact hearing include the Town of Newington and the Rockingham Planning Commission. The process places certain requirements upon the applicant, in this case PSNH. The regional impact process requires a 14-day notice period as compared to the usual 5-day notice that this Board operates under. The City is applying, and has been applying, the regional impact notice requirement both to the Board of Adjustments and the Planning Board. In the processing of the PSNH application, administrative actions and decisions are made which may be subject to appeal. This differs from no other building permit application submitted to the City. However, such an appeal has been filed by the abutters to the PSNH site. In accordance with State law, it has been scheduled before the Board at the June 1 meeting, which the Board will be asked to schedule. These requests have to be heard within 30 days of receipt. This Board is scheduled to review the deferred portions of the PSNH application at the May 25 meeting. This date is in accord with regional notice requirements. The issue for the Board that is being presented by Attorney McNeil on behalf of the interested parties is a request to consolidate all actions relative to this application on either May 25 or June 1. That means May 25 is the PSNH application, and June 1 is the appeal of the administrative actions. They would like to have those consolidated on one of those dates. A rebuttal to this position has been offered by Attorney Ciandella on behalf of PSNH.

Exception. Said property is shown on Assessor Plan 273 as Lot 3 and lies within the General Business district. Case # 4-12

Chairman LeBlanc received a written request, dated May 14, 2004 , withdrawing this application.

B) Petition of **Barry and Carol L. Shore, owners**, for property located at **91 South Street** wherein the following were requested: 1) a Variance from Article IV, Section 10-402(B) and Section 10-401(A)(2)(c) to allow a 3'10" x 15' - 1 ½ story addition to the left side of the existing garage with an 8.1' left side yard and an 11' rear yard where 12.3' is the minimum required for both, and 2) a Variance from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) to allow a 13'3" x 18'5" - 1 ½ story addition to the rear of the existing dwelling with a 6" right side yard where 10' is the minimum required and b) a total of 355.25 sf of new building footprint creating 42.4% building coverage where 30% is the maximum allowed. Said property is shown on Assessor Plan 102 as Lot 46 and lies within the General Residence B and Historic A districts. Case # 4-7

Mr. Horrigan recused himself. Both Mr. MacCallum and Mr. Berg sat in.

Mr. Robert Rodier, an architect representing Barry and Carol Shore, addressed the Board. Mr. Rodier passed out exhibits and explained details of the original property and the proposed changes. He said they had work sessions with the Historic District Commission. Chairman LeBlanc asked what was the purpose of putting a second story on the garage. Mr. Rodier said it was to add storage loft and a music room, which would be heated but without plumbing.

Mr. Shore said he and his wife have lived at 91 South Street for 20 years. There are two neighboring houses on Johnson Court that have significantly improved their properties in the past several months. These neighbors shared their plans with the Shores. The Shores also shared their proposed plans with these neighbors, and they had working sessions with the HDC, which were very helpful. The HDC made suggestions, which were actually improvements, and the Shores were pleased to include them in their plans. Mr. Shore emphasized that the proposed plan would be going up only 1½ stories to maintain the historic integrity of the house. One of the neighbors called him with a concern about water. There are already water problems, and he was concerned the sloping roof would cause more water problems. He said he worked with the architect to address this problem. Another issue raised was Johnson Court which is only 15 feet wide. He pointed out that there are other streets which are even more narrow, i.e., Richmond Street, Hunking Court and Waltham Alley. He said the architect had addressed the City's concern about excavation, and the foundation would be 4 feet from road rather than the original 6 inches. He believes this is working under a hardship because the size of the lot is less than 5,000 square feet space. They wish to preserve the historic character of the house. The proposed addition is building over an existing deck. Chairman LeBlanc asked about his working diligently to eliminate an increase in water problems. In working with the architect on this issue, Mr. Shore said gutters would be added.

SPEAKING IN FAVOR OF THE PETITION

Mr. Ned Hill, a direct abutter on Johnson Court, spoke in favor of the petition. He said the Shores were involved with his recent addition and gave him advice. The Shores' plans went through much

more design and preparation than Mr. Hill's. Mr. Hill and his wife are very pleased with the plans. The project will complement the other homes on Johnson Court.

Mr. Gary Lowe of 105 South Street spoke in favor of the proposal. He said they live on a long, thin lot and are 0 inches from the property line. He said the roof line of the Shores' addition would fit in. He said the only problem he did have was a concern about the rain run-off from the roof. He said since the construction on Johnson Court, he said for the first time ever he had a water problem in his yard for much of the spring. He said he had submitted a letter April 17, 2004 to be part of this petition. In his discussions with the Shores, he felt that their architect would deal with this problem by use of gutters

Mr. Edward Scully of 77 South Street spoke in full support of the proposal. He said he has lived there for 40 years and is very happy with the changes they are making, and it will definitely be an attribute to the neighborhood.

Betty Swartz of 33 Johnson Street, spoke in favor of the proposal. She said the small changes proposed would change the Shores' home dramatically by giving them more space and improve their light from the south and the west.

Guthrie Swartz of 33 Johnson Street said that this two bedroom windows look right out at this addition so he sees more of it than anyone in the neighborhood. He is totally enthusiastic about this change. He could not see it having any negative impact on light or air. The footprint did not change much. The neighborhood values are definitely on the rise, and this latest improvement will be an asset to the neighborhood.

Mr. Bernard Pelech, attorney for the Shores, said that the relief being requested sounds like a lot with requests for three variances for three small additions. The architect, Mr. Rodier, came up with some innovative methods of dealing with the concerns raised by the Planning Department in its memo written prior to the April meeting. Architectural integrity is being preserved, and nothing is being done that would be detrimental to the public interest. The value of the house and the neighborhood will be enhanced. The applicants' proposal is a reasonable use of property. HDC approval is needed for this unique property. Neighbors have testified that there will still be adequate light and air.

Mr. MacCallum inquired about the change in Mr. Rodier's plans as compared with the Planning Department's memo of April 17 in which it addressed previous concerns. Mr. Pelech said the footing and foundation would actually be set back 6 inches from the existing location. The roof overhang and drainage would be addressed. Cantilevered construction would be utilized to make the building consistent with the other Johnson Court properties. Ms Tillman said that the architect solved the problem of a building encroaching on a public right of way quite uniquely by moving the foundation and building over.

The public hearing was closed.

DECISION OF THE BOARD

Mr. MacCallum moved that the application be denied. Mr. Holloway seconded the motion for discussion.

Mr. MacCallum said he visited the site, and it is a massive building sitting on a relatively small lot. The existing building was already over 30% property coverage, and the new building would take it to 42%. There is a difference between building a deck and a 2-story addition. It is a clear trend toward overgrowth and overintensification. Light and air in the neighborhood will be affected. He cited the letter, which is included in this petition, in opposition to the proposal submitted by Dr. and Mrs. Lannon of 139A South Street, objecting to the loss of enjoyment of their water views by the construction of additions to neighboring properties. Mr. MacCallum felt that this proposal was contrary to the public interest. The neighborhood is already dense as it is. He did not feel the hardship of the property criterion was met. The owners are already using the property reasonably. The spirit of the ordinance is to protect air, light, space. He felt this was at odds with the proposal. Variance must not diminish value of the property. He agrees that the surrounding values will be enhanced by this project.

Mr. Holloway said he would not support the motion. He did not agree with all of it. The lot size does not make it easy. It is obvious that the neighbors are not concerned by it.

Mr. Witham said he agreed with Mr. Holloway. He would not support the motion. He said he looked at the property last month and he went back and looked at the property today. He did not feel that it was overintensified. He did not feel light and air would be affected by this proposal. He disagreed that if this application were granted, then every other application in this district would also have to be granted. He found this house to be very unique the way it is situated on the street.

The motion to deny has failed by a vote of 1-6, with Mr. MacCallum being the only vote in favor. .

Mr. Parrott said he would like to make a motion to approve and add a stipulation, if there were a second. Mr. Witham seconded the motion.

Mr. Parrott said he would like to add the stipulation that the foundation of the addition be constructed as presented in the foundation plan dated and given to the Board of Adjustment on May 18, 2004. That is not part of original proposal, and that is why he added that. Chairman LeBlanc asked if he would also be willing to stipulate that there be no plumbing in the garage and that the space not be residential in any way. Mr. Parrott so stipulated.

Mr. Parrott said he appreciated the concerns the Board already had on an overly developed lot. It is in an odd location on a short, dead-end street. The neighbors have not objected and are in support of the project. The concerns of the Planning Department in regard to the foundation have been addressed. The concerns about the run-off from the house going into the street is not going to get any worse because the house already sits on the edge of the street. The attempt to deal with some of the run-off by adding gutters will help that situation.

Mr. Parrott said the request will not be contrary to the public interest. Because of the odd location of this house on a short, dead-end street, there is not much public interest to be determined. This property is more unique than some because it is an old house on a small lot and on a short, dead-end street. The 1½-story addition replacing a deck will not cause any problems. The literal enforcement of the ordinance does not apply. The zoning restriction does deny use of the property somewhat because the property is small, and there is no way to enlarge it. The owners are enlarging the house in an architecturally acceptable manner that is acceptable to the HDC, which is a

SPEAKING IN OPPOSITION

Mr. Owens of 10 Spinney Road said he was an abutter to Mr. Yosua. He passed out photos of the property to the Board. He said he was sorry to take an opposition to his neighbor building the deck, but it affects him in a number of ways. The pictures show that there is room between the pool and the house and between the pool and the middle of the property. He said he was not aware of a filtration issue. There is a privacy issue as the deck sits 2½ feet from his property line. If someone stands on the deck, they look right into his property. His property is quite large, and his house is far away. But that may not always be the case. The property may be used differently in the future, and another house could go in next to his. He had concern that the deck with pool would adversely affect the value of his property if subdivided for sale. Noise carries quite a bit into the play/quiet area he is currently landscaping. Voices penetrate into his yard. Many other lots in the area are between 7,000 and 9,000 square feet.

Mr. MacCallum inquired about trees and vegetation acting as a screen from pool. Mr. Owens said the vegetation and trees did not go that high. Mr. MacCallum suggested a stipulation requiring a higher fence or trees. Mr. Owens said it would have to be a fairly tall fence. He did not think the noise at night could be improved. Mr. Parrott questioned the grade of the two properties. They were of the same grade. Mr. Jousse asked what kind of noise, boom-box or voices? Mr. Owens said there were quite a few kids with booming voices. It's good fun, but noisy. Mr. Jousse speculated that the placement of the deck where it is now was probably a better location than at the other end of the property line. Mr. MacCallum asked how Mr. Owens took the pictures. Mr. Owens said he took the pictures on a ladder looking into Mr. Yosua's yard to illustrate that there were other spots in the property where the pool could go other than than corner. Chairman LeBlanc inquired about the frontage on Spinney Road. Ms. Tillman said based on her earlier discussion with Mr. Owens about this property, she thought he lacked adequate area to subdivide his lot into a second lot without seeking a variance. Mr. MacCallum asked Ms. Tillman what was the maximum height on fence. Screening requirements between a business and residential property call for a solid wooden fence not less than 8 feet in height. That is what zoning ordinance calls for required screening, but this is residential property so screening is not required

Chairman LeBlanc offered Mr. Yosua a two-minute rebuttal. Mr. Yosua asked Mr. Owens if the fence did meet the variance of 10 feet, would that lessen any of the notice. Also, would it hurt the view of his property from his house which sits on a knoll. He said Mr. Owens seemed vehement about the whole idea of an 8' by 10' deck that kids play on. He just can't see that the noise issue would be any different at 10 feet or 3 feet.

The public hearing was closed.

DECISION OF THE BOARD

Mr. Berg said he had a question for Ms. Tillman. He understood the deck was built without a building permit. He asked if the building inspector had looked at the existing deck to see if it met code. Other than location, would it have received a building permit? Structurally, she said she did not know. That would happen after they got a variance to locate it. Then the building inspector would review the plan for the structural portion of it.

Currently, as you go out the back door, you go down a flight of stairs which is a little unwieldy going into the house while carrying groceries. It would be nice to have a little larger area to sit. It would also permit a little larger area to walk out of the house. The total lot coverage is 26.9 % and the new area would be 29.4%. Mr. Cowgill said before he began this application, he spoke to each of his neighbors and asked if anyone would have any objections. They all said no objection.

Mr. Charles LeBlanc of 100 Wibird Street said he was a next-door neighbor to the Cowgills. Mr. LeBlanc mentioned that on the right side of Mr. Cowgill's house there was a driveway that goes back to the property that sits in the back of Wibird Street. It is within 7 feet of the property line. Mr. LeBlanc said he had no objections to Mr. Cowgill's proposal.

The public hearing was closed.

DECISION OF THE BOARD

Mr. Witham made a motion to grant the petition as advertised and presented. Motion was seconded by Mr. Berg.

Mr. Witham said considering the circulation of the house, adding the deck creates a much safer environment. The encroachment on an area that is used strictly as driveway has no adverse impact on that property. The other variance is for lot coverage, an increase of 2½%, which is quite minimal considering the fact that this is one of those areas where lot size does not meet lot coverage requirements. This is in keeping with the neighborhood character. It would not be contrary to the public interest. It will not affect light or air. The property line that separates this is used strictly as a driveway. It is reasonable to ask for the situation of the deck where it is. There is no conflict with the private or public rights of others. It is in the spirit of the ordinance to allow this house to grow. It is minimal impact and of minimal size. Substantial justice is being done to let this homeowner use this house in a much more reasonable and safer fashion with access to his back door.

Mr. Berg said a deck is a reasonable addition to the house and a reasonable request. It improves the utility of the house.

As a result of this consideration, the Board voted unanimously, 7-0, to grant the request as advertised and presented. Ms. Tillman stated that the picture became part of the record.

Chairman LeBlanc returned to the Chair.

4) Petition of **Clear Channel Broadcasting Inc., owner**, for property located at **815 Lafayette Road** wherein a Special Exception as allowed in Article II, Section 10-10-208(51) was requested to replace 5 existing panel antennae with 12 panel antennae at the height of 165' on the existing 490' antenna. Said property is shown on Assessor Plan 245 as Lot 3 and lies within the General Business district. Case # 5-3

SPEAKING IN FAVOR OF THE PETITION

Mr. Jim Valarioni, on behalf of Verizon Wireless, addressed the Board. The facility is currently located on a 490-foot tower located behind the shopping plaza at 815 Lafayette Road. Verizon

Wireless has had an installation existing at the site since 1992. It provides coverage to a large portion of the City of Portsmouth. Two other carriers, Nextel and Omni, appeared before this Board not long ago and received special exceptions to allow for higher antennae on this tower. Verizon Wireless is now seeking a special exception to alter its existing facility so that the five existing panel antennae, which are old, can be replaced with a newer antennae system consisting of 12 panel antennae. The ordinance allows for this type of use, which is a wireless telephone switching facility. Twelve antennae panels are now a typical installation in these types of facilities. Verizon Wireless is now in a position to make some of the network changes in New Hampshire and Southern Maine that would upgrade the facility and provide better service to its subscribers. Mr. Valarioni passed out copies of the proposed plans. The alterations are to the antennae panels on the tower only. There are no alterations to the ground base facility, which has been operating since 1992.

Mr. Valarioni said there are six special exception standards to be met, and he believed that this application met all of them. There is no hazard to the public. There is no change in character. These are minor modifications and will not have any impact on neighborhood property values. There is no impact on surrounding area. There will be no impact on traffic. There will be no increase in site visits, which average twice a month. There is no demand for municipal services. There is no water or sewer. There is no storm water run-off on adjacent property.

Mr. Jousse asked if there were more than one antenna on the site. Mr. Valarioni said that there were several antennae on the tower with several users. Mr. Jousse rephrased his question and asked if there were more than one tower. There are two radio towers, including one smaller one in the rear. Verizon Wireless is not increasing the height of the tower. They are modifying existing antennae panels on the existing tower. For the record, Ms. Tillman said the tower is considered to be 500 feet. The tower under discussion is the same tower, and it is not getting any taller.

Mr. Parrott inquired how the existing antennae panels compared with the new antennae panels in relation to size and weight. Mr. Valarioni said they are very similar. He said he had a structural analysis report prepared by Vertical Structures, Inc. which gave all the specifications. The approximate weight of the panel is 14 pounds. Mr. Parrott asked about the foundation of the tower and made reference to comments made that no site visit was made. Mr. Valarioni said a site visit was not required. An engineer occasionally visits the site, and if he sees that there are any problems or any maintenance required, that information is passed on to the users. Building codes are based on industrial codes. Structural plans were drawn up to satisfy the building permit. The tower is designed to withstand ice and wind. Mr. Jousse expressed some concern that the foundation of the building was not regularly inspected. Mr. Valarioni said if there were a concern, he would gladly have an engineer visit the site and update the specifications of the building along with the modifications to be made. Mr. Jousse inquired about the useful age of the structure. Mr. Valarioni said he thought the age was well beyond 50 years, but these facilities were typically leased for 100 years.

Mr. Berg asked if there were any other antennae on the structure other than those already mentioned. Mr. Valarioni said there was an FM station and individual "whips," and the three cell companies. He further asked if the space occupied currently would be the same area used for the twelve new panels. The area would be similar to the existing space, a radius of 10 to 12 feet. There is no lighting and no noise associated with these panels.

Mr. Horrigan inquired about RF emissions and if there were any hazard to the public safety. Mr. Valarioni said that the ordinance actually speaks to that issue in that electro magnetic interference cannot be allowed. Emission levels were well within levels set by the FCC. Mr. Horrigan said that a radio station uses this tower. FM radio bands are saturated by that station, and it is hard to pick up any other station. The radio station comes in on the telephone sometimes. He questioned whether the increase in wireless antenna configurations would accumulate and become a similar problem. Mr. Valarioni said SEC regulations require that Verizon Wireless would have to resolve any interference where it was determined to be the cause.

The public hearing was closed.

DECISION OF THE BOARD

Mr. Parrott moved that the request be granted as advertised and presented with the stipulation that prior to the installation of the antenna package, a licensed civil engineer perform an on-site inspection of the tower (as far as it can be seen), its foundation, attachments and guy system, to ensure that all is in sound condition and will support the existing and proposed antennas. Mr. Berg seconded the motion.

Mr. Parrott said there was no hazard to the public or adjacent residential property. There was no detriment to property value, and the characteristics of the area would not be changed as the tower had already been in existence for years. There would be no traffic, parking, or pollution. There would be no demand for municipal services or increase in storm water run-off

Mr. Berg agreed with Mr. Parrott. The antennae were already in existence, and what is being proposed is a slight change. It will not look any different. It is modernization, and therefore is a benefit to the community.

As a result of this consideration, the Board voted unanimously to grant the request as advertised and presented with the following stipulation:

- That prior to the installation of the antenna package, a licensed civil engineer perform an on-site inspection of the tower (as far as it can be seen), its foundation, attachments and guy system, to ensure that all is in sound condition and will support the existing and proposed antennas.

5) Petition of **Joseph R. Gobbi Jr., owner**, for property located at **27 Elm Court** wherein Variances from Article III, Section 10-304(A) and Article IV, 10-401(A)(2)(c) were requested to allow a 12' x 18' two story addition with: a) a 3'± rear yard where 15' is the minimum required, and b) a 13' right side yard where 15' is the minimum required and 2) a Variance from Article IV, Section 10-401(A)(1)(b)&(c) to allow the expansion of a single family dwelling in a district where such use is not allowed. Said property is shown on Assessor Plan 164 as Lot 9 and lies within the Business district. Case # 5-4

SPEAKING IN FAVOR OF THE PETITION

Mr. Bernie Pelech, representing Mr. Gobbi, addressed the Board. He said Elm Court is slightly larger than Johnson Court. It has about 4 houses. The residential aspect of that area of town precedes zoning. It was one of the original sites for the homes of Frank Jones brewery workers. Over the years the area has become mostly commercial, which led to it being zoned business district in 1982. This, and the other homes, is a residential use that is a non-conforming use in the district. It would be an understatement to say that this is a unique lot. The lot is 2,840 square feet in size where 20,000 square feet is the minimum lot size. The end of this street called Elm Court is a motor vehicle repair facility, which abuts the rear. On the left side is a 15-25-foot high berm which is the site of the Boston & Maine Railroad. The house is 630 square feet and is a very narrow 17 feet wide. What Mr. Gobbi proposed to do was to put an addition to the rear of his property. This would not diminish the property values of the surrounding properties. It would probably enhance them. Several of the area properties have been improved. It is a reasonable use of the property to expand the size from 630 to 835 square feet. It is a unique lot because of its size, location, and abutters. This property and use predate the zoning. It is difficult to do much of anything with a 2,840 square foot lot without some type of relief. Strict adherence to the setback regulation is not applicable. This would not interfere with the public and private rights of others. It is a compact and congested neighborhood. Mr. Gobbi would be removing a 200 square foot deck and adding a 202 square foot addition. Lot coverage would remain the same. Substantial justice would be done.

One of the reasons for the variance, other than the coming baby, was the basement with standing water for most of the year. Mr. Pelech circulated a photograph showing a washer and dryer up on blocks and standing water on the basement floor. With the new addition the washer and dryer and a new bath would go to the main floor with a master bedroom suite on the second floor. The hardship on the owner in denying the variance would not be outweighed by any benefit to the general public. This addition is not visible from Islington Street because of the abutting properties and where it is situated. The property value would be enhanced. This would not be an overintensification given the abutters on the two sides. Mr. Pelech said that all the conditions for variance were met.

The public hearing was closed.

DECISION OF THE BOARD

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

The Elm Court area is really a small residential enclave although it is zoned business. In a previous hearing, various abutters indicated they were quite concerned about their rights and benefits as residential property owners. Looking at that neighborhood, it is in the public interest to allow this building to remain a residential use. Hardship is well stated by the petitioner. It is a very unique property bounded by the railroad, a very busy intersection, with difficult access from Islington Street. The house is by contemporary standards quite small. It is a reasonable proposition to not only continue use as a residential home but also that they be allowed to expand. The hardship test is met. This is not violating the spirit of the zoning ordinance. It will not interfere with the public or private rights of others. It will be most respectful of their private rights. The building is

SPEAKING IN OPPOSITION

Gene Schrager, an abutter at 151 Clinton Street, addressed the Board. He submitted a letter and photographs of the properties affected. He has lived in this neighborhood for 10 years, and the neighbors get along. When Mr. Hood went to him and presented his plans, he really did not know how to take it. He thought about it a lot and sought advice from people in the real estate business and some engineer friends. The variance that Mr. Hood was seeking is to build 4 feet from his property line where 10 feet is required. The location Mr. Hood was seeking would block Mr. Schrager's sunlight and view. The 4-foot setback would detract from the residential character of the neighborhood. He said there were several other options which would comply with requirements. He could put the addition on the other side of the property. He could build a separate structure. Another concern is drainage. There are no gutters on the structure. Whenever it rains, the area around his carriage house/apartment gets flooded. He called attention to the photos and evidence of what the morning sunlight conditions are like. He also pointed out the difference in space between houses that were 10 feet apart and 5 feet apart. He said it gave the feeling of a tenement neighborhood.

The public hearing was closed.

Mr. MacCallum said although he was not voting on this petition, he wanted to state his opinion. He felt it should not be granted as the addition would run right up to the corner of carriage house. He could see no reason why the owners could not build elsewhere. If the variance were granted, the houses would be too close to one another. This is a why zoning ordinance provides for a buffer for setback.

DECISION OF THE BOARD

Mr. Witham moved that the petition be granted and advertised as presented. Mr. Berg seconded the motion.

Mr. Witham said the applicant stated a list of reasons why the location of this addition would work best for this property. The abutter who opposed the addition thought it would be a distraction to the residential character of the area. He did not see that it was out of character to have this type of setback. The sunlight argument does not carry a lot of weight. He did not think the variance would be contrary to the public interest. It is consistent with what is in the area. There are no windows on that side. It should in no way take away from the enjoyment of the abutter. The view from the kitchen window is just a narrow view. Looking at the zoning restriction as applied, the location of existing structure would be 4 feet. He did not see that this took away from abutter's property as it is in the trees and there is not much sunlight. Also, the house on the other side of the abutter has a 1-story addition so it is compatible. He did not see the variance injuring the private or public rights of others. He thought the spirit of the ordinance was met. Diminution to property not an issue.

Mr. Berg said he agreed with Mr. Witham and had nothing to add.

Mr. Jousse said he would not support the motion. Convenience of the applicant is not one of the requirements of granting a variance. There are ample locations within the lot to place this addition and still be attached to the house. It could be placed on the back of the building or make a separate building for studio.

DECISION OF THE BOARD

Mr. Jousse moved that the motion be granted as advertised and presented. Mr. Witham seconded the motion.

Mr. Jousse felt obligated to approve this variance for a sign because that is something that should have gone along at the same time the facility was approved almost two years ago. He said the request for a variance was not contrary to the public interest. A special condition did exist. There is not much sense having a business if you can't advertise it is there. No air and substantial relationship exists between the general purpose of the zoning ordinance and the special restriction on the property. The business that was there before had numerous signs, and the business that is there now would have only one sign. This variance would not injure the public or private rights of others. None of the abutters voiced any opinion. He believed the request was consistent with the spirit of the ordinance. There would be no diminution of surrounding property. The current building on site is a tremendous improvement over what was there before.

Mr. Witham was going to suggest a stipulation, but he said he was pretty comfortable with the sign being "down lit" as opposed to being lit only during the hours of operation. After discussion among the Board members, Mr. Witham made a stipulation that the sign be a solid painted sign, down lit, and lit only during the hours of operation. Since the Board has allowed this business to exist in a residential zone, he felt that 36 square feet for a sign was reasonable.

Chairman LeBlanc said he would not support the motion. This is a residential area, and the Board has allowed a commercial building to be there. To allow a sign is not good for this area. There is commercial property all around it. The National Guard is across the street on Cottage Street. P K Brown is down the Road. Coast Cadillac is on the other side of the street. To put a sign in there detracts from the character of a residential area.

Mr. Parrott agreed with Chairman LeBlanc's comments. He felt the size of the sign was excessive.

As a result of this consideration, a motion to grant failed and the request was denied 3-4. Mr. Holloway, Mr. Berg, Chairman LeBlanc, and Mr. Parrott all voted in the negative.

9) Petition of **Stacey L. Bussing, owner, and Lee Gove, option holder**, for property located at **51 Morning Street** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow an irregular shaped 276 sf two story building after demolition of the existing 276 sf addition with 38.2% building coverage where 25% is the maximum allowed. Said property is shown on Assessor Plan 163 as Lot 16 and lies within the General Residence A district. Case # 5-8

SPEAKING IN FAVOR OF THE PETITION

Mr. Lee Gove, current owner of the property, addressed the Board. In looking at the plot plan for this building, there was no ramp on the building at this time. It was taken off. He proposed to tear down the kitchen section of the building because of the structural inadequacies. There are no footings underneath. There is a small dirt crawl space. He was asking to tear down what is there and rebuild on solid footing in the same spot and build up into a second floor. He spoke with his

rear abutters, and they gave him their verbal support. What he is building should not a problem with any of the abutters. Both back abutters are much higher, and the land slopes down quite a bit. The new second floor of the house will be a master bedroom, bathroom, and den/office. Mr. Parrott clarified with Mr. Gove that the re-building would all be on same footprint.

The public hearing was closed.

DECISION OF THE BOARD

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

Mr. Parrott said the requested variance would not be contrary to the public interest. The project is not an expansion in size but upwards. The special condition of this property is the size of the lot. The house is small of necessity. The additions will make it more useful. Literal enforcement of the ordinance in this case would be an unnecessary hardship. The zoning ordinance interferes with the property owner's reasonable use of the property. There is no fair and substantial relationship existing between the general purposes of the zoning ordinance and the specific restriction on the property. The variance would not injure the public or private rights of others. No one is here at the meeting to object. The requested variance is consistent with the spirit of the ordinance. The addition will make the building more useful and more livable for the owner. Substantial justice is done by granting the variance. It will make the property more attractive. Granting the variance will not diminish the value of surrounding properties.

Mr. Horrigan agreed with Mr. Parrott. The most important issue here is what the owner is proposing will improve the appearance and the neighborhood in general.

As a result of this consideration, the Board voted unanimously to grant the request as advertised and presented.

Upon motion duly made and seconded, the meeting adjourned at 11:15 P.M.

Respectfully submitted,

Mary Ann Brown
Acting Secretary

These minutes were approved with one addition at July 20, 2004 Board of Adjustment Meeting.