

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

7:00 P.M.

JUNE 15, 2004

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

MEMBERS EXCUSED: David Witham, Alternate Duncan MacCallum

ALSO PRESENT: Lucy Tillman, Planner

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**I. OLD BUSINESS**

A) Request for a One-Year Extension of Variance by **Parrott Avenue Place, Inc., owners** of property located at **127 Parrott Avenue** wherein a Variance from Article XII, Section 10-1204 Table 15 was requested to allow 22 existing parking spaces onsite where 46 parking spaces are required in conjunction with a proposed 18' x 30' two story addition and existing uses onsite.

Mr. Parrott clarified that it was the first request for a One-Year-Extension of Variance and then made a motion to grant the request. The Board voted unanimously to grant the request for an extension.

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1) Petition of **Andrew J. Widen, owner, Jonah Fernald d/b/a Portsmouth Rent & Ride, applicant**, for property located at **955 Sagamore Avenue** wherein a Variance from Article II, Section 10-208(2) is requested to allow the rental and sales of bicycles, cross-country skis, snow shoes and related products in a district where such use is not allowed. Said property is shown on Assessor Plan 201as Lot 1 and lies within the Waterfront Business district. Case # 6-1

SPEAKING IN FAVOR

Attorney Bernard Pelech represented Jonah Fernald and Portsmouth Rent and Ride. He stated that the corner of the lot, which had frontage on Sagamore Creek, had a huge amount of ledge. He also said that there was water access from Sagamore Road and Sagamore Grove Road; however, no parking was allowed along Sagamore Grove Road.

He stated the special conditions associated with this property were that it directly abuts a Mixed Residential District and a Mixed Residential Office District. He stated that the uses along Sagamore Road on that side of the bridge are almost exclusively commercial in nature. He also stated that the business was re-located from downtown Portsmouth and spoke to the difficulty of hauling kayaks to the water from Hanover/High Street. He stated that the primary component of the business is kayak rental and tours. He also stated that there was no demand for kayak rentals during the winter months so to keep the business viable, the applicant has rented cross-country skis, snowshoes and bicycles. He stated that the rental of the winter sports equipment was a very small portion of the business.

Attorney Pelech spoke to the purpose of the Waterfront Business District and stated that Rent and Ride would be replacing a convenience store and that the proposed use was more conforming than the former.

Addressing the hardship criteria, Attorney Pelech stated that the Zoning Ordinance would interfere with the reasonable use of the property, considering its unique setting. He reiterated that kayak rentals and tours comprised the largest portion of the applicant's work and it is an allowable use in the district; however, the rental of cross-country skis, snowshoes and bikes were not allowed because they are not water-related. He stated that this creates a hardship upon the applicant and results in the Ordinance interfering with the reasonable use of the property. He stated that the property lies within a unique setting, abutting MRB and MRO districts, where this use would be allowed, and that 87% of the entire property was involved in water-related uses. Other businesses on the property include a lobster pound and a place for repair of lobster traps and rental of docking facilities.

He stated that there was no fair and substantial relationship between the general purpose of the Zoning Ordinance and the specific restriction on this property; and, that the purpose of the waterfront business district is to preserve waterfront property for businesses requiring access to the water.

He maintained that there were no public or private rights that would be affected if the requested variance were granted; and that there was no Right of Way (ROW) across the property and no private rights that would be affected whatsoever.

Attorney Pelech stated that this type of business generates a very small parking requirement, not more than 4 or 5 vehicles daily; and that during the alternate months, the lobster pound is often closed and overflow parking would not be a problem. He stated that during the summer months, the kayak business does not generate more need for parking than can be accommodated by the parking lot, even taking the lobster pound into consideration. He stated that the applicant had been there since Memorial Day and there had been no problems with parking on that very busy weekend. He stated that the use is not generating any more traffic than the former convenience store and gift shop.

He felt that granting the request would benefit the public interest as the rental of kayaks, cross-country skis, snowshoes and bikes provides a service to members of the community. He stated that the property is an ideal location for that business and there is also ample parking.

Attorney Pelech stated that there would be no increase in City services or an over-intensification of the use of the property. He stated that it would be in the public interest to grant the request and in keeping with the spirit and intent of the Zoning Ordinance. He stated that it would not result in overcrowding or congestion and would benefit the health and welfare of the community.

Attorney Pelech stated that substantial justice would be done by granting the variance as the applicant would be forced to abandon a portion of his business or move his kayak business away from the water if the request were not granted. He felt there would be diminution to surrounding properties as a result of granting this variance; and stated that there had been no objections from the neighbors regarding this use. He stated that most of the business would be contained within the building with some kayak storage outdoors.

Mr. Jonah Fernald, the owner of the business, was introduced. He stated that he presently rents kayaks and pending the decision of the Board, would begin the peripheral rentals.

It was established that the area that the applicant would occupy would be approximately 1,000 square feet, which would be sufficient for storage of all the rental equipment and there would be no need for outside storage sheds. The owner stated that he would be able to contain all the equipment within the building, with the exception of the kayaks.

The proprietor of the Portsmouth Brewery, spoke on behalf of Jonah Fernald. He felt that the use in that space would be appropriate. He stated that what Jonah provides in his business is a very good match for why people chose to visit and live in the seacoast. He felt that the rental of all the equipment was very low impact and should be encouraged for the area. He stated that Mr. Fernald had done a lot to bring in tourism and contribute to the community.

Marge Hubbard, Present Manager of the Chamber of Commerce, stated that they work closely with the City to make Portsmouth a year-round destination. She felt that the proposed business would contribute to people wanting to come to the seacoast. She felt it would enhance the quality of life for the residents and visitors and help the downtown businesses remain viable year-round.

Mr. Marchewka inquired about the level of business activity and whether there was adequate parking. Mr. Fernald stated that tours usually accommodate 8-10 people who typically arrive in 2-3 cars. He also stated that they deliver bicycles to hotels for the most part via pre-arranged reservations. He also mentioned that they had been given permission by the City to engage in a bike tour with folks from the television production of *Chronicle*, who were promoting a segment on "Gasless Vacations".

Chairman LeBlanc questioned the volume of customer traffic during the winter. Mr. Fernald stated that they had 30 pair of skis and on a good day, they would all be used; however, some of that business was associated with schools and hotels as well, where the equipment would be delivered to the site.

Mr. Jousse asked how long the applicant had been leasing from the owner. Attorney Pelech stated that it was two weeks and he was only renting out kayaks at this time.

Mike Derhammer, former employee of Mr. Fernald, stated that many people who came into the business from out of town felt it was a business that would be beneficial to Portsmouth.

Jeffrey Fregon, employee of Mr. Fernald for two years, stated that they provide a great service for people who want to enjoy the roads and waterways in the area. He stated that they educate the public so they can enjoy these activities in a safer environment.

Mr. Rich Holser, who does independent video productions, some of which have appeared on Public Broadcasting Stations (PBS), stated that he had met Mr. Fernald and was very impressed with Mr. Fernald is trying to do and urged the Board to think about the direction in which the business is going. He stated that this business was quiet, encourages people to be healthy, and would make Portsmouth a place where people would be peaceful, happy and healthy.

DECISION OF THE BOARD

Mr. Berg made a motion to grant the petition as advertised and presented; and, Mr. Marchewka seconded the motion.

Mr. Berg felt that kayaking, biking, snowshoeing and cross-country skiing were all related activities, given the fact that the people who would be most likely to kayak in the summer would probably

engage in the other activities during alternate seasons. He felt that it made sense that a business that is involved in one of those activities would most likely be involved in the others. He felt that to encourage an appropriate waterfront use, the City might have to recognize related enterprises. He stated that it would not be fair to penalize the business owner who wants to remain open year round, to prevent them from engaging in other activities that the same customer base would pursue when kayaking is not practical.

He felt it was an appropriate use to be located by the water and if the Zoning Ordinance did not allow the rental of the peripheral equipment, that would be a hardship. He felt that the zoning would interfere with the reasonable use of the property and stated that if the related uses were prohibited, there would not be a substantial and fair relationship between the purpose of zoning and the specific restriction on the property.

Some of the Board members felt that granting this variance would not interfere with the private rights of others, stating that no one had spoken out in opposition. They felt that there would be no diminution of property values; nor, would there be an issue with substantial justice, as there would be no benefit to the public in denying the applicant's request.

Other Board members did not support the request. They felt that other businesses dealing in the rental of snowshoes, skis and kayaks have survived without being located on the water. They felt that it was not necessary for the applicant to be on the water to succeed. Other views were that the waterfront business district is at a premium and the Board needs to preserve it as diligently as possible.

Mr. Horrigan stated that the petition failed on the second hardship criteria. He felt that there was no fair and substantial relationship between the general purpose of the zoning and the specific property. He added that the waterfront district is constantly under attack from developers and that this district is one of the variables that define the unique character of our community. He stated that without this waterfront zoning, Portsmouth would cease to be Portsmouth over time. He stated that the Board had a very important obligation to protect this particular zone. They stated that this particular piece of property sits on waterfront and the citizens of Portsmouth and the developers of the zoning code have said they want that to remain waterfront business. He failed to see how the rental of bicycles, skis and snowshoes was connected to the waterfront; and he had concerns that the business could be extended to include all types of sporting equipment.

It was felt that this business would be a good use of the waterfront district and would allow visitors and residents to enjoy the local waterways. The requested uses were found to be complementary on a seasonal basis and would not detract from other water-related uses.

The petition was granted with a vote of 4 to 3. Mr. Jousse, Mr. Horrigan and Mr. Holloway voted in the negative.

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2) Petition of **Richard J. Menard, owner**, for property located at **137 Elwyn Avenue** wherein a Variance from Article IV, Section 10-402(B) is requested to allow a 24' x 24' detached one story garage with: a) a 4' left side yard where 10' is the minimum required, and b) 29.4% building coverage where 25% is the maximum allowed. Said property is shown on Assessor Plan 112 as Lot 48 and lies within the General Residence A district. Case # 6-2

**SPEAKING IN FAVOR OF THE PETITION**

Mr. Richard J. Menard stated that his father had fallen ill after the variance was initially granted and they were now in a position where they would like to request that the variance be granted.

Chairman LeBlanc asked if there was a hardship as to why it has to be positioned as it is proposed on the property. Mr. Menard stated that the garage would be built on the existing foundation and the setback would be 10' from the road. He stated that they would like to have a driveway in the front of the garage. He was requesting a variance because the proposed garage would be 4' from the fence, which was the location of the original garage.

**THE DECISION OF THE BOARD**

Vice-chair Horrigan made a motion to grant the request as advertised and presented. Mr. Parrott seconded the motion.

Mr. Horrigan stated that the public interest would be met by allowing a garage for the property owner and removing some of his vehicles off the street. He felt that it would provide safer conditions on both Elwyn Ave. and McNabb Court.

Mr. Horrigan felt that a special condition existed in that a footing for the garage already exists and it would make sense economically and technologically to use part of that footing for the new garage. It was noted that the proposed building would be located approximately along the same sideline as the previous garage; yet, it would move back 10'. They felt it would be an improvement over the non-conforming conditions of the previous garage.

The Board stated that the benefit sought by the applicant could not be achieved by any other method as it is a very small lot and in order to build a two-car garage, they would most likely exceed the lot coverage requirements.

They felt the spirit of the Zoning Ordinance encourages the development of garages on residential properties and it did not appear that anyone's public or private rights would be violated. The Board stated that the proposed garage would enhance the appearance and value of the property as well as surrounding properties, as opposed to the former garage that was in serious need of repair.

Also noted by Mr. Parrott was that the positioning of the garage would be the best location in respect to neighboring properties and the 4% increase in lot coverage was not felt to be excessive.

The Board voted unanimously in favor of granting the requested variance.

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3) Petition of **Malthouse Exchange Realty Trust, owner, Everyone Does The Dishes LLC, applicant, d/b/a Slate**, for property located at **95 Brewery Lane Unit #7** wherein a Variance from Article II, Section 10-208(19) is requested to allow a 4,200 sf restaurant with a bar in a district where such use is not allowed. Said property is shown on Assessor Plan 146 as Lot 27 and lies within the Business district. Case # 6-3

Attorney Pelech requested that the petition be either withdrawn or tabled as a result of a memo from the Police Department which he was given upon his arrival. He stated that they had been given much different information from the Police Department than what was in the memo. Attorney Pelech also

stated that he would like an opinion from the City Attorney as to whether he considered this a *use* or an *area* variance, so the correct standards could be applied.

Chairman LeBlanc read aloud the BOA Regulations regarding withdrawal. It was decided to withdraw the petition with 30 days to decide whether or not it will be resubmitted.

4) Petition of **Sharan R. Gross Revocable Trust, owner**, for property located at **201 Cate Street** wherein a Variance from Article IX, Section 10-908 is requested to allow a 24 sf attached sign for a hair salon in a district where commercial signs are not allowed. Said property is shown on Assessor Plan 163 as Lot 32 and lies within the General Residence A district. Case # 6-4

SPEAKING IN FAVOR OF THE PETITION

Mr. Peter Weeks, Real Estate Consultant, spoke on behalf of the petitioner. A letter in support of the petition, from Janice E. Anderson at 224 Cate Street was read into the record and submitted to the Board. He stated that they had requested a 40 sf attached sign at the last meeting and were revising their request to a 24 sf attached sign. He stated the need for the size of the proposed sign was so it would be readable from the street. He spoke about an aerial view depicting the “stuff” that was formerly stored on the site, such as old floats and marine materials. He reiterated the abutter’s comments regarding the improvement the present property is to look at. He stated that although it was zoned residential, most of the properties on Cate Street are of a commercial nature.

Mr. Weeks stated that the requested variance would not be contrary to the public interest as the public would be able to identify the business from the street. He felt it would have no detrimental effect on the public. Mr. Weeks felt that the zoning restriction would interfere with the reasonable use of the property; and that this property has contained non-conforming commercial uses in a residential zone for many years. Mr. Weeks noted that there had been signs in the past for identifying the commercial uses, and that no fair and substantial relationship exists between the general purposes of the Zoning Ordinance and the specific restriction on the property.

He stated that by granting the variance would not affect the private rights of others, and he referred to the neighbors who had voiced their support. He felt that granting the variance would be consistent with the spirit of the ordinance which is to protect the property rights of the owners. He stated that substantial justice would be done by granting the variance and referred to the former property that identified itself by displaying signage and storing cars and boats for repair.

Mr. Weeks said that granting the request would not diminish the value of the surrounding properties and stated that the Special Exception that had been granted previously allowed an upgrade to this property and the proposed sign will do nothing to diminish the value of surrounding properties.

He stated that it was a tasteful sign and the petitioner would be glad to make it a condition of approval that the sign be illuminated only during hours of operation.

Chairman LeBlanc confirmed the hours of operation, which would be 8 a.m. to 7 p.m., Monday through Saturday.

DECISION OF THE BOARD

Mr. Horrigan made a motion to grant as advertised and presented, and Chairman LeBlanc and Mr. Parrott requested two stipulations be added. Those stipulations were as follows:

- That no neon or internally illuminated signage be allowed.
- That the sign be illuminated only during hours of operation.

Mr. Horrigan stated that a sign that identifies the business is in the public interest. He approved of the decision to use attached signage, stating that it was a more sensitive location as opposed to being placed in front of the business.

He felt that attaching the sign to the building and reducing it to a more appropriate size were factors that ensured that it would not injure the public or private rights of others. Mr. Horrigan felt it would be consistent with the spirit of the ordinance to allow the business to identify itself and substantial justice was being done by the fact that they had reduced the size of the sign to the minimum. He stated that the building was an improvement to the neighborhood and would not diminish the value of surrounding properties.

Mr. Marchewka agreed with Mr. Horrigan, and added that the petitioner was granted a Special Exception to have a commercial establishment and that it would be reasonable to expect that they would require signage. He felt that the sign was reasonable in size and location and the fact that it would not be illuminated 24 hours was in its favor.

Mr. Parrott added that because signs are not allowed in residential zones, we have no guidelines by which to go. He felt that the size of the sign was slightly larger than he would like to see but that it was reasonable and he would support the request.

Mr. Berg added that the sign that is proposed is a much smaller proportion of the façade that the signage for the former auto repair business, and he would support the request. Mr. Horrigan agreed with Mr. Berg, stating that the former business had a proliferation of signs.

Chairman LeBlanc commented that the grand-fathering was gone on the former signage and that it had been over a year since they had been torn down. He stated that the Board was under no moral or legal operation to grant the sign to this particular operation. He added that the size and siting of the building on the lot would be sufficient to attract customers. For those reasons, Chairman LeBlanc could not support the request.

Mr. LeBlanc called for the vote to grant as advertised and presented with the stipulations outlined above. The petition was granted with a 6 – 1 vote. Chairman LeBlanc vote in opposition.

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5) Petition of **E&V Truck Leasing Inc., owner, Premier Development Enterprises Inc., applicant**, for property located off **Lafayette Road** wherein a Variance from Article II, Section 10-208(53)(E) is requested to allow a temporary retail business in carts or trailers with an outdoor display area in excess of a 6' strip abutting and around the carts and trailers. Said property is shown on Assessor Plan 297 as Lot 2 and lies within the General Business district. Case # 6-5

**SPEAKING IN FAVOR OF THE PETITION**

Mr. Tim Lawler stated that granting the variance would not be contrary to the public interest as it would make his product available to the public. He stated that it would be consistent with the Zoning Ordinance to sell his product off Lafayette Road as the sale of Christmas trees and sheds had been approved for sale in the area in the past. He stated that granting the variance would not diminish the value of surrounding properties as the request would be for a temporary use of the property.

Mr. Lawler stated that he would be in operation from the time of approval until mid-October; and that he hoped to have a permanent place by next year. The Board that if he did not have a permanent place next year, he would have to apply for another variance to utilize the proposed property at that time.

Mr. Horrigan questioned the access to the lot and whether there was a driveway permit. Mr. Lawler stated that there was a driveway and he was working with the Department of Transportation regarding state access. Mr. Horrigan was concerned with the traffic and the speed at which it travels and did not want to approve a variance without having knowledge regarding the ingress and egress.

Mr. Lawler said signs for the business would be on the side of the trailers and referred to a photo that had been submitted for the record.

## **DECISION OF THE BOARD**

Chairman LeBlanc requested a motion for a temporary variance for a retail business in carts or trailers for outdoor display.

Mr. Marchewka made a motion that the variance be granted as advertised and presented, and Mr. Jousse seconded the motion.

Mr. Marchewka stated that granting the variance would not be contrary to public interest as there was nothing on the land that would be impacted. He said that it was a typical situation along Route 1, and that this type of variance had been granted for the outdoor sale of sheds, children's play areas, and seasonal furniture. He stated that special conditions existed whereby strict adherence to the Ordinance would pose a hardship, in that it would prohibit the sale of seasonal items and it was not the intent of the Zoning Ordinance to do so. He stated that it was consistent with the spirit of the Ordinance to allow seasonal sales on certain parcels of land. It was also felt that there would be no diminution of surrounding property values since the request would be of a temporary nature.

Mr. Jousse felt that the ingress and egress to the property would not pose a problem based on the experience of the businesses that surround the vacant lot and have similar driveways.

Mr. Parrott stated that granting the proposed variance would be granting an application with no controls that apply to a normal business. He stated that there was no representation regarding the area of signage, they do not have a driveway permit, there is no representation regarding traffic flow or parking or any of the requirements that go into a site review. He stated that he did not know if the 105' setback on Lafayette Road was in compliance. Mr. Parrott also stated that the business was portrayed as a seasonal business; however, the products portrayed in the picture did not appear to be seasonal. He also remarked that if the business were to go bankrupt, the City would be left with an eyesore on one of its main arteries.

Chairman LeBlanc called for the vote to grant as advertised and presented with the following stipulations:

- That the Variance be granted contingent upon curb cut approval by the Department of Transportation.
- That the Variance expires on October 15, 2004.



The petition was granted by a vote of 6 to 1. Mr. Parrott voted in opposition.

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6) Petition of **David F. Meehan, owner**, for property located at **766 Sagamore Avenue** wherein a Variance from Article III, Section 10-302(A) is requested to allow 708 sf L-shaped two story attached garage with second floor study and basement with a 5' left side yard where 10' is the minimum required. Said property is shown on Assessor Plan 223 as Lot 4 and lies within the Single Residence B district. Case # 6-6

SPEAKING IN FAVOR OF THE PETITION

Mr. David Meehan, owner/applicant, stated that the location he had chosen to place the proposed construction was the best location due to constraints of a large degree of ledge. He stated that the proposed construction would encroach on one neighbor and that neighbor had expressed support of the project.

Chairman LeBlanc asked if he had a curb cut on Sagamore Avenue. The applicant replied that he had curb cuts on both Sagamore and Cliff Road.

Mr. Horrigan confirmed that the back yard along Cliff Road was the location of the septic system; and, along Sagamore Road there was a great degree of ledge.

Mr. Meehan stated that putting the addition in the back, on the left side would give him almost a full stand-up basement and stairwell.

Mr. Horrigan commented on the condition of the present garage and confirmed that the proposed structure would be much more in harmony with the house.

DECISION OF THE BOARD

Mr. Horrigan made a motion to grant the request for dimensional relief as advertised and presented with the stipulation that the property remains a single-family dwelling.

Given the nature of the lot, Mr. Parrott stated that the location of the septic system and the presence of ledge on the property, the Board felt that this would be the only logical place to put the garage.

Mr. Horrigan spoke about the constrictions posed on the lot by ledge and topography as well as the unsightly garage. He felt it was in the public interest to encourage the owner to replace it. He felt that building a two-car garage was a reasonable use of the property; and attaching the garage made great sense, in terms of winter. He stated that it was not the purpose of the Zoning Ordinance to deny the owner a larger attached garage. He stated that granting the request would be consistent with the spirit of the Ordinance in allowing the owner to enjoy fuller use of his property.

It was stated that substantial justice would be done and granting the variance would not injure the public or private rights of others. Mr. Horrigan referred to the fact that no one had voiced any opposing views.

It was agreed that granting the variance would not diminish the value of surrounding properties but only serve to enhance the property and adjacent properties as well.

Chairman LeBlanc noted that the property line actually goes away from the garage; which was another reason to allow the request. He called for the vote with the stipulation that the property remains a single-family dwelling.

The petition was granted unanimously by the Board.

7) Petition of **Derek M. and Wendy C. Rolfe, owners**, for property located at **419 South Street** wherein a Variance from Article III, Section 10-302(A) is requested to allow a 848 sf one story addition with an 11' rear yard and a 331 sf addition with a 12' rear yard where 20' is the minimum rear yard required. Said property is shown on Assessor Plan 112 as Lot 54 and lies within the General Residence A district. Case # 6-7

SPEAKING IN FAVOR OF THE PETITION

Derek and Wendy Rolfe were requesting a variance to allow a 3 bedroom, 2 bath addition. The current home has one bedroom and their two-year old son sleeps in what should be a den. The existing structure is approximately 3' off the rear setback and surrounded by nine abutters. He stated that they had shared their intent with their neighbors and they have been supportive. They have worked hard at keeping the addition as low-lying as possible so as not to overpower their existing house or that of the abutters.

Mr. Rolfe addressed the five criteria. He stated that granting the variance would not be contrary to the public interest as the encroachment would be less than currently exists; and, they have the support of their neighbors. He stated that special conditions exist in the fact that they were adding on to a very small structure which is very close to the boundary line due to the fact that it was built before zoning requirements were in place. He stated the only location they could put the addition was in the front of the house because the foundation would not support building upward.

Mr. Rolfe stated that granting the variance would be consistent with the spirit of the ordinance due to the fact that, with the addition, the lot coverage would still remain less than 20%. He felt that substantial justice would be done by allowing them to stay in their home and add to their family without adversely affecting the house or encroaching on the neighbors. He felt that the design of the addition was in keeping with the neighborhood and would add to the value of his property and that of his neighbors.

Chairman LeBlanc noted that the house is not visible from South Street and had it not been for the sign, he would not have found it.

A neighbor at 46 McNabb Court, stated that the Rolfes were very up front with the design of the design possibilities and took great care in making sure the neighbors were agreeable to their request for a variance. She also stated that the 3' setback has posed no problem and the 12' would be an improvement. She also stated that the architectural style that was being proposed would be consistent with the neighborhood.

DECISION OF THE BOARD

Vice-chair Horrigan made a motion that the request be granted as advertised and presented and Mr. Parrott seconded the motion.

Mr. Horrigan stated that the lot includes a long driveway, limiting the area on which to build. He felt that the plan was reasonable and would have the least amount of impact on abutting properties. He felt that the proposed plan would be in the public interest.

He also stated the special conditions exist in the fact that the lot is oddly configured and largely taken up by driveway, leaving little room for expansion of the home; and the home is relatively small per contemporary requirements.

He stated that the proposed location of the addition would be the best fit, in terms of the character of the neighborhood. He stated that the spirit of the ordinance would encourage this type of renovation

and he could see no substantial justice issue in granting the requested variance. He noted that there had been no negative input from neighbors regarding the request. He also stated that the expansion would enhance the value of this and surrounding properties.

Mr. Parrott stated that the most striking aspect of the request was the odd shape of the lot, which also created a hardship for the petitioner. Given the constraints, he felt that what the petitioner was requesting was reasonable.

Chairman LeBlanc called for the vote to grant as advertised and presented and the Board voted unanimously in favor of granting the petition.

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8) Petition of **Margaret M. Brennan, owner**, for property located at **86 Thornton Street** wherein the following are requested: 1) a Variance from Article II, Section 10-206 to allow one room and a bathroom in the basement to be used for a business (The Joyful Healing Place), and 2) a Variance from Article XII, Section 10-1204 Table 15 to allow no parking to be provided for the business where two parking spaces are required. Said property is shown on Assessor Plan 160 as Lot 2 and lies within the General Residence A district. Case # 6-8

**SPEAKING IN FAVOR OF THE PETITION**

Mr. Jousse stepped down for the hearing of this petition.

Ms. Brennan was requesting a variance to do Polarity and Reiki in her home. She stated that Reiki is a healing modality practiced in local hospitals. She stated that a children’s room and a toilet existed in the basement of the house when she purchased it, and she maintained that it would pose a financial hardship for her to have to rent an additional space to do her work. She said that her clients came one at a time, and she had devised a way to enable them not to have to back into the street. She also presented a petition that had been signed by neighbors in favor of her request.

Chairman LeBlanc clarified that the property was a duplex ranch; and the left half was owned by the petitioner.

Ms. Brennan added that she was planning to use the back entranceway, which was flat as opposed to the front entrance that went up an incline.

Mr. Horrigan clarified that the reason for the variance was due to square footage, parking and the hours of operation. He also questioned the petitioner on the other criteria relative to Occupation II.

Ms. Brennan said that her hours of operation would be: 10 a.m. to 7 p.m. Monday through Friday; and 10 a.m. to 1 p.m. on Saturday.

Ms. Mary Gildee of Manor Drive, who is similarly employed, spoke in favorable terms regarding her longtime acquaintance with the petitioner as well as the nature of the work they do. She stated that this was a very low-impact occupation, whereby one client is seen at a time, and it is usually limited to three people within a day. She also testified to the professionalism of Ms. Brennan.

**DECISION OF THE BOARD**

Mr. Berg made a motion to grant the request as advertised and presented. Mr. Marchewka seconded the motion.

He felt that it was a modest extension of the Home Occupation concept. There is parking provided, even though it does not meet the strict definition of what a business would require.

He did not feel that it would be contrary to the public interest and that substantial justice would be done in granting the variance. He stressed the importance of the neighbors signing the petition in favor of the request.

Mr. Berg felt that it would be consistent with the spirit of the ordinance. He stated that the Zoning Ordinance does not intend to deny people having a small business. He stated that with one person at a time and one extra car, he did not see how it would diminish the value of that property or of surrounding properties.

Mr. Marchewka requested to add the following stipulations:

- That it remain a one-person business with no employees.
- That no signs be installed on the property.
- That the hours of operation not exceed the following: Monday-Friday 10 a.m. to 7 p.m.; and Saturday 10 a.m. to 1 p.m.

Mr. Marchewka stated that the petitioner would not be manufacturing or assembling anything and there are no deliveries. He stated that it a dense but not a busy neighborhood and there would be no problems with traffic or congestion.

Chairman called for the vote with the above stipulations. The Board voted to grant the petition by a 5 to 1 vote. Mr. Parrott voted in the negative.

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9) Petition of **Friends of The Music Hall, owner, Portsmouth Community Radio, applicant**, for property located at **28 Chestnut Street** wherein a Variance from Article III, Section 10-304(A) is requested to amend the previously approved 20' antenna to a 25' antenna with associated elements where the maximum height allowed is 10' for roof appurtenances. Said property is shown on Assessor Plan 126 as Lot 7 and lies within the Central Business B and Historic A districts. Case # 6-9

**SPEAKING IN FAVOR OF THE PETITION**

Attorney Bernard Pelech represented Portsmouth Community Radio and spoke to the variance which had been granted in February of this year. He stated that nothing had changed from the Planning Department memo of February, other than the fact that the FCC (Federal Communications Commission) now requires that the antenna go up another 5'.

Attorney Pelech referred to the criteria of the February Board Adjustment meeting and stated that the only change would be the new criteria per *Boccia v. City of Portsmouth*. He stated that granting the proposed variance would be in the public interest as local public radio would benefit the community in its ability to broadcast local news.

He felt that granting the variance would not diminish the value of surrounding properties. He stated that they had worked with the neighbors to ensure that the location would be as unobtrusive as possible.

He stated that substantial justice would be done in granting the variance. He stated that there would be no benefit to the public in denying the variance to allow a public radio station. He stated that granting the variance would not be contrary to the spirit and intent of the ordinance as the proposed antenna is much less visible than other roof appurtenances such as elevator housings and ventilator shafts which are governed by the Zoning Ordinance. He did not feel that the Ordinance intended to put the same restrictions on antennas.

In terms of the hardship criteria, per *Boccia*, Attorney Pelech stated that there were no special conditions in terms of the 10' height requirement that would not also be imposed on other commercial buildings in the area. He stated that the variance was needed to enable the use, and that the benefit sought by the applicant could not be achieved by any other feasible method. He stated that installing a transmitting antenna 20' above the roof surface would require some structure. He also noted that the Board had found the criteria had been met when they granted the variance for a 20' antenna; and, nothing, other than the addition of 5' has been changed.

Tim Stone of Portsmouth Community Radio, answered a few technical questions from the Board regarding the need for the added 5' to the antenna, stating that it was necessary in order to ensure that the radio signal gets correctly formed.

Mr. Horrigan asked if the concerns of the residents of the Rockingham had been met in terms of moving the antenna to partly obscure its view from the hotel. Mr. Stone said that it had been done after the previous meeting. He did not feel that the added 5' would make much difference and that the profile of the antenna is overall smaller and less visible.

Mr. Stone replied to a question from Mr. Parrott, stating that the height guideline has been established by the FCC (Federal Communications Commission) to protect rooftop workers from any radio wave exposure. He added that they had originally started with a plan for a 40' antenna; however due to the opposition raised by the residents of the Rockingham, they trimmed the antenna too far; and later realized it did not meet the criteria necessary per the FCC. He stated that they had a structure engineer on the rooftop and saw no reason they would be back before the Board.

Mr. Parrott made a motion to grant the variance as advertised and presented and it was seconded by Vice-chair Horrigan.

Mr. Parrott stated that the whole purpose of the proposed project was in the public interest. He stated that all the reasons for which they had granted the initial variance applied to this request and that the added 5' to the top of the antenna does not change those concerns.

He stated that literal enforcement of the Ordinance would result in unnecessary hardship as it would prohibit compliance with FCC regulations that are based on the health and safety of those who need to work near the antenna. He said the Ordinance would interfere with the reasonable use of the property for this particular purpose, as it would prohibit the use. He stated that he could see no logical application of the general purpose of the Zoning Ordinance such that it would prohibit this use. He felt that it would not injure the public or private rights of others and noted that no one had spoken up in opposition.

Mr. Parrott added that granting the variance would be consistent with the spirit of the ordinance that promotes knowledge to the community. He added that substantial justice would be done in granting the variance as Portsmouth Community Radio had searched citywide to find a logical spot and this one seemed to work. He did not feel that granting the variance would affect surrounding values as it was up and out of sight and would have little impact.

Mr. Horrigan stated that they required the extra 5' to satisfy the FCC regulations and the variance should be granted.

The Board voted unanimously to grant the variance.

## **II. ADJOURNMENT**

A motion was made and seconded and the meeting was adjourned at 10:15 p.m.

Respectfully submitted,

Judith A. Claveau  
Secretary, Board of Adjustment

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

Mary E. Koepenick  
Secretary