

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

7:00 P.M.

August 24, 2004

Present: Chairman Charles LeBlanc; Vice-Chairman James Horrigan; Alain Jousse, Bob Marchewka, Nate Holloway, David Witham, Arthur Parrott, Alternate Steven Berg, Alternate Duncan MacCallum

Also Present: Lucy E. Tillman, Planner

Excused: N/A

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**I. APPROVAL OF MINUTES**

Minutes from meeting of April 20, 2004 were unanimously approved.

**II. OLD BUSINESS**

**A. Request for rehearing on application of Justine Rosberg and Jason Parent d/b/a Meat House LLC, Applicants.**

Mr. Horrigan made a motion to table the request for rehearing until the meeting of the Board on Wednesday, August 25, 2004. The motion was seconded and the Board voted unanimously to table the request to enable the Board time to read the materials submitted.

**III. PUBLIC HEARINGS**

9) Petition of **Deborah C. Hobbs, owner**, for property located at **489 Sagamore Avenue** wherein a Variance from Article III, Section 10-301(A)(2) is requested to allow a 26' x 36' freestanding second dwelling on the lot in a district where all dwelling units are required to be in one building. Said property is shown on Assessor Plan 222 as Lot 25 and lies within the General Residence A district. Case # 8-9

(Mr. Parrottt stepped down from this hearing)

**SPEAKING TO THE PETITION**

Attorney Bernard Pelech represented the owner/ applicant of the above property. Attorney Pelech stated that the present request for variance should seem familiar to the Board because the Board did grant this variance in May of 2003. Attorney Pelech stated that, unfortunately, the variance expired, and in discussing with Ms. Hobbs the reason, he learned that they had a tenant they did not want to evict as a result of it not being able to begin construction in a timely manner before the variance expired this May.

Attorney Pelech stated that there is no difference between this application and the prior application, except that his client is no longer asking that the existing second dwelling be allowed to remain until the new one is built. Attorney Pelech stated that, in other words, in May of 2003, when the Board granted this variance, there was a stipulation that the existing dwelling unit be torn down within 30 days after the issuance of a Certificate of Occupancy for the new structure. Attorney Pelech stated that was because they had tenants, and presently, they do not have tenants. Attorney Pelech stated that the dwelling has been vacant since the end of April, and as a result, if this variance is granted, the first thing the applicant will do is file an application for a demolition permit and demolish the existing structure.

Attorney Pelech stated that there is a Memo that was submitted to the Board, and that this is a Use Variance, not a Dimensional Variance, so the Simplex case which applied back in 2003 still applies to the present application. Attorney Pelech stated that the Board found that all the prior criteria that were necessary for the variance to be granted back in May 2003, and hopefully would find the same for the present requested variance.

Attorney Pelech stated that at 1.35 acres, this is a huge lot for this district. Attorney Pelech referred to the site plan, stating that there are two existing dwelling units. Attorney Pelech stated that what is being proposed is to demolish the smaller unit and put in its place a two-story dwelling unit, with a two-car garage on the first floor, and living space above. Attorney Pelech stated that the minimum lot size for this district is 7500 square feet, and that this lot is approximately eight times the required minimum lot size.

Attorney Pelech stated that a second dwelling unit has existed for quite some time. Attorney Pelech made reference to the photograph of the property. Attorney Pelech stated that this proposal is to construct a 26' x 36' garage and a second story dwelling unit to replace the existing unit, which is 20' x 20', and is in extensive need of repair. Attorney Pelech again made reference to the photos of the property.

Attorney Pelech stated that the applicants originally discussed either renovating or adding on to the dwelling, but that the contractor indicated that it is in such bad shape that it really is not structurally sound, and that it should be demolished and have a new building put in its place.

Attorney Pelech stated that a variance is required from Article III, Section 10-301(A)(2), which states that only one freestanding single dwelling unit is allowed per lot. Attorney Pelech made reference to the criteria set forth in the Memo antedated in the Simplex case, and suggested that there is a hardship associated with the property in regards to their reasonable use of the property given its unique setting. Attorney Pelech reminded the Board that this is a property that is about eight times the minimum lot size required in this zone.

Attorney Pelech also stated that the lot abuts a Garden Apartments/Mobile Home district where the Sagamore Apartments are located.

Attorney Pelech also stated that there is an existing second freestanding home on the lot. Attorney Pelech stated that these three factors differentiate this property from other properties similarly situated in the area.

Attorney Pelech stated that he believes that there is no fair and substantial relationship between the general purpose of the Zoning Ordinance and the specific restriction on the property. Attorney Pelech

stated that given the fact that a second freestanding dwelling unit presently exists on the property, and also given the fact that this property is eight times the size required by the Zoning Ordinance, there is no fair and substantial relationship between the general purpose of the Zoning Ordinance and its specific restriction on the property.

Attorney Pelech stated that he believes that the purpose of the Zoning Ordinance in restricting lots to one dwelling unit is to prevent overcrowding of the land, to provide adequate light and air, and to provide access to emergency vehicles in and about these units. Attorney Pelech stated that he thinks that this application meets all of those purposes.

Attorney Pelech made reference to the tax map, and stated that the lot in question is of such size that it far exceeds any such acts and that it provides adequate light and air and does not result in overcrowding of the land. Attorney Pelech stated that if this lot were not eight times the size as required by the Zoning Ordinance, he could not make that argument. Attorney Pelech stated that the lot, if it had adequate frontage (which it does not), could be sub-divided.

Attorney Pelech stated that granting this request for variance would not result in a substantial interference with public or private rights, given the fact that there is already an existing second dwelling unit. Attorney Pelech stated that he believes that allowing a second dwelling unit to continue would not in any way affect public or private rights. Attorney Pelech stated that there are no private rights of way, and that the application is not proposing that or in close proximity of any abutting properties. Attorney Pelech stated that there are no public rights across the property. Attorney Pelech stated that he believes that all three parts of the Simplex case for hardship are met by this application.

Attorney Pelech also stated that he believes that granting the request for variance will not result in any diminishing of value of the surrounding properties. He stated that there is already a second dwelling there and that replacing the dwelling with a more aesthetically pleasing structure would not affect surrounding property values either.

Attorney Pelech also stated that he believes that substantial justice would be done by granting the request for variance. Attorney Pelech stated that the second dwelling has existed for many years on the property and that denying the request for variance would result in a substantial hardship for the owner and applicant. Attorney Pelech stated that this hardship is not out-weighed by any general public benefit. Attorney Pelech stated that the general public would not be harmed by elimination of that second dwelling unit, as it shouldn't contribute to the housing shortage that presently exists in the city. Attorney Pelech stated that allowing a code-compliant structure to replace the current structure would result in substantial justice being done.

Attorney Pelech stated that the second dwelling unit would not require any additional services as such water and sewer, fire protection, or the impact upon the school system.

Attorney Pelech stated that, given the size of this lot and because there is already a second freestanding dwelling unit, this application is consistent with the spirit and intent of the Zoning Ordinance.

Attorney Pelech stated that given that there is a perceived housing shortage in the city, allowing a second dwelling to continue to exist on the property would not create something that doesn't already exist. He stated that it would benefit the public to provide adequate housing within the city and to provide code-compliant housing within the city.

Attorney Pelech concluded that the five criteria are met by the applicant and requested of the Board to (as it did in May of 2003), grant the request for variance as presented and advertised. The building would be demolished prior to construction starting heretofore.

Mr. Horrigan stated that he was aware that this application went before the Board previously. He asked if there are some reasons why this property could not be subdivided.

Attorney Pelech responded that in looking at the tax maps, the property lacks the adequate frontage required to subdivide it.

Mr. Witham referred to the floor plan, which shows two sets of stairs, and asked whether they are two separate spaces.

Attorney Pelech responded that he was not sure why it was designed that way, that it was designed according to code, and that he was surprised to see that also.

### **SPEAKING AGAINST THE PETITION**

Mr. Carl Bragey who lives adjacent to 489 Sagamore Avenue, and shares a common property line of 109 feet, requested to speak in opposition of the petition. He stated the he sees no hardship for the owners of the property if their request is not approved.

Mr. Bragey stated that when he moved there 30 years ago, it (the second dwelling) was there. He stated that it was a nice little cottage. Over the last ten years, it has obviously deteriorated. Mr. Bragey stated that he would not deny that it because the second dwelling is an eyesore. Mr. Bragey stated that a realtor in Portsmouth had advised him that any construction on this site to replace a home at this end with one of such size would diminish the value of his property.

Mr. Bragey stated that he looked at the dwelling that the applicants have presented and it looked like it was almost double the amount that was available. He stated that he did not believe that the granting of the variance would be of any substantial justice to the neighborhood or community at large.

Chairman LeBlanc confirmed with Mr. Bragey that his property is on the left-hand side of the applicants' property and that he had been there for 30 years and that the cottage had been there the entire time.

Mr. Bragey stated that while he did not know who has resided in the dwelling, but that it has been lived in and that it has been occupied until just recently.

Mr. Berg asked how far Mr. Bragey's property is from the cottage.

Mr. Bragey stated that his property is approximately 40-50 feet from the cottage.

Mr. Witham stated that he wanted to correct the speaker when he said the proposed structure is two times larger. It is actually four times.

Michael Webb of 493 Sagamore Avenue requested to speak in opposition of the petition. Mr. Webb stated that he abuts the property at 489 Sagamore Avenue. He stated that he did not believe denial of this variance would result in any unnecessary hardship, particularly since it is not in the spirit of the

Zoning Ordinance. Mr. Webb also stated that the proposed dwelling would be located to the rear of his house, and would appear to be in closer proximity as it is two stories.

Mr. Webb stated that, additionally, since the applicant's driveway and his driveway are so closely located, it is not uncommon for guests to pull into his driveway then back out and enter the applicant's driveway. He stated that Sagamore Avenue has blind spots occurring both North and South. Mr. Webb stated that because of the location of the structure and driveway entries, his property would be lessened in value. Mr. Webb noted that another dwelling on a single lot means more vehicle traffic.

There was some discussion of where the properties of Mr. Bragey and Mr. Webb were located in relation to the property of the applicants. It was concluded that they are located on Lots 23 and 24.

Chairman LeBlanc called for anyone else wishing to speak to, for, or against the petition. Seeing none, Chairman LeBlanc declared the public hearing closed. Chairman LeBlanc asked the pleasure of the Board regarding the applicants' request for a second freestanding dwelling on a lot in a residential district.

### **DECISION OF THE BOARD**

Mr. Witham made a motion to deny the application as presented and advertised. Mr. Holloway seconded the motion.

Mr. Witham stated that he finds the proposed structure to be four times larger than what existed, and that it would have a significant impact on the backyards and the properties of the others. Mr. Witham stated that with the cottage being as low as it is and the lights on at night, the fence is shading that light, and that the proposed structure, being elevated, would change the feel and the character of those backyards of the abutters. Mr. Witham referred to the Simplex reasonable use of property, and stated that the property is already there and that he believed it would be reasonable to have it rebuilt.

Mr. Witham stated that he did not believe it would be reasonable to build a structure of the size proposed in the petition on a property such as this, with a two-car garage on the first floor, and that he did not see how denying this variance would create any unnecessary hardship. Mr. Witham stated that he did not think what is being proposed is reasonable, considering what exists there now.

Mr. Witham stated that he did not believe that it is within in the spirit of the Zoning Ordinance to have a structure of this size with the two-car garage.

Mr. Witham stated that he thinks that rebuilding the cottage as it is now is substantial justice, as opposed to repairing something that is not code-compliant. He thought that the proposed structure goes above and beyond that, being four times larger.

Mr. Witham stated that he agreed with the abutter who said he spoke to a realtor that, although it is always difficult to say that an abutter's property would be diminished, but that he thought that the value of their property would be diminished to have a structure of this size, with the living quarters elevated. He stated that the windows would make light and that it would be "a different feel" to have a backyard that looks at living quarters (as opposed to fencing). Mr. Witham stated that while the zoning does allow up to four units on a lot of this size, it is very different from what is being proposed.

Mr. Witham made a motion to deny the petition for the above stated reasons. Mr. Holloway seconded the motion. He stated that the proposed structure appears to be quite a large structure that is very different than what is already on the property. He also noted that the applicants are still getting use of the property as it is. He stated that for these reasons, he supported the motion to deny the petition.

Chairman LeBlanc called for the vote.

The motion to deny passed with a 6-1 vote, with Mr. Berg voting in the affirmative. The petition was denied.

10) The Portsmouth Board of Adjustment, acting pursuant to NH RSA 12-G:13 and Chapter 300 of the Pease Development Authority Zoning Requirements, will review and make a recommendation to the Board of Directors of the Pease Development Authority regarding the following petition of **Portsmouth Regional Hospital, applicant**, for property located at **26 Manchester Square** wherein a Variance from the Pease Development Authority Zoning Ordinance Section 306.01(d) is requested to allow installation of signs on a lot deprived of its street frontage. Said property is shown on Assessor Plan 302 as Lot 4 and lies within the Business and Commercial district. Case # 8-10

### **SPEAKING TO THE PETITION**

Mr. William Duffy, representing Portsmouth Regional Hospital, addressed the Board. He stated that what this petition is asking to do is a proposed signage for a lot at 26 Manchester Square, which currently has two businesses on it.

Mr. Duffy stated that what the applicants are asking to do is to install signage on this building in these places on Manchester Avenue, to allow for the public to see and be able to get access to use the facility. He stated that the reason for the variance is that, (making reference to the documents provided to the Board) the lot in question does not have any frontage, and according to the zoning regulations regarding signage, street frontage is required to calculate signage. He stated that the reason the property does not have street frontage is that the parking lot is actually shared with area offices.

Chairman LeBlanc called for any questions from the Board members.

Mr. Marchewka asked for the size of the sign.

Mr. Duffy responded that the size is 3'x 6'.

Mr. Marchewka asked if this would be a conforming size.

Ms. Tillman stated that she would defer to Maria Stowell on that, as it would be part of the Pease Zoning Ordinance as opposed to that of the City of Portsmouth.

Maria stated that it would conform. She confirmed that the parking lot is actually a separate lot.

Mr. Horrigan asked if the signs that are currently on the building are the signs in question.

Mr. Duffy responded that one of them is, but that the applicants plan to replace both of them.

Mr. Horrigan asked if the replacements would be essentially the same size.

Mr. Duffy responded in the affirmative.

Chairman LeBlanc verified with Mr. Duffy that the signs would be attached to the building. He called for any other questions from the Board.

Chairman LeBlanc called for anyone else wishing to speak to, for or against the petition. Seeing no one rise, Chairman LeBlanc declared the public hearing closed.

## **DECISION OF THE BOARD**

Mr. Horrigan made a motion to recommend to the Pease Development Authority to approve the petition as presented and advertised. The motion was seconded.

Mr. Horrigan stated that as far as the public interest being served, there has to be some way to identify this building and the current proposal for signage seems quite appropriate. He stated that it is not detracting from the site at all.

Mr. Horrigan stated that if the public cannot see the sign, the building cannot be identified, and that it would be in the public interest to allow the signage.

He stated that as far as the hardship is concerned, in the unique setting – they don't have any road frontage and that creates this problem that the applicant is confronted with.. He stated that for the same reason, he thought that the Zoning Ordinance would be most unfair to impose a strict interpretation in this case. He stated that it is not injuring the public and private rights of others in the immediate area.

Mr. Horrigan stated that giving the permission to have signage on this building would be within the spirit of the Zoning Ordinance and that substantial justice would be done for everyone concerned. He stated that he did not see any impact at all on the value of the surrounding properties.

Mr. Parrott seconded Mr. Horrigan's motion.

Chairman LeBlanc, hearing no other comment from the Board, called for the vote. The petition for recommendation to the Pease Development Authority to approve installation of signage at 26 Manchester Square was passed with a unanimous vote.

11) Petition of **Bacman Enterprises Inc, owner**, for property located at **140 Edmond Avenue** wherein the following are requested: 1) a Variance from Article II, Section 10-206 to allow the entire lower level of the 2,300+ sf building to be used as a chiropractic office where a 300+ sf office and 5 parking spaces had been approved in 1978 in a district where such use is not allowed and 2) a Variance from Article XII, Section 10-1204 Table 15 to allow the additional required parking to back out onto the street and park one behind another. Said property is shown on Assessor Plan 220 as Lot 81 and lies within the Single Residence B district. Case # 8-11

## **SPEAKING TO THE PETITION**

Attorney Bernard Pelech represented the owner/ applicant of the above property. Attorney Pelech made reference to the tax map distributed to the Board, and stated that Bacman Enterprises is on Lot #81. He stated that through the site is Interstate I-95, which he had highlighted in yellow. He stated

that to the east are two undeveloped lots owned by the City of Portsmouth. He stated that Bacman Enterprises asked to acquire those from the City and that is how this whole thing came about. He stated that the City originally agreed, provided that something could be placed on there (the land), and that because of the wetlands, that would be probably difficult. He stated that across the street is 1.36 acres of wetlands, public service company's easement, which is vacant.

Attorney Pelech referred to the Planning Department Memo, stating that back in 1978, this Board granted a variance to allow 300+/- square foot chiropractic office, provided there were five parking spaces, and that the regularly scheduled office hours did not include Saturday or Sunday. He stated that in the intervening 26 years, the chiropractic business has grown, such that it now occupies the entire basement of this duplex. He stated that this structure has already been duplex, and that the Board in 1978 granted permission for 300 square feet in the basement to be used. He stated that at the present time, the entire basement is being used.

Attorney Pelech stated that the applicant is seeking to receive a permit to allow the 2300 square feet of the basement, or the remaining 1950 square feet of the basement, to be used for the chiropractic office. Attorney Pelech stated that he believes that the lot is a unique lot, being surrounded by I-95 on one side, undeveloped wetlands owned by the city on the other side, and a large public service company in the lot across the street. He stated that he would suggest that the zoning restriction, as applied, would interfere with the landowner's reasonable use of the property. He stated that the Board in 1978 felt that it would be reasonable to allow the chiropractic office to be there, given the unique location of this property. He stated that what had transpired in the 26 years is that the business has grown. He stated that the fact that the business has grown does not affect that fact that this is a reasonable use.

Attorney Pelech stated that he believes that no fair and substantial relationship exists between the general purpose of the Zoning Ordinance and its restriction on this property. He stated that if the property were surrounded by residential uses, he would not make this statement, but that he could (referring to the tax map) because only one side of the property is abutted by residential use, and there is no possibility that the other three sides would ever be used for residential purposes. He stated that the city would not allow its property to be used for residential purposes and that the public service company's huge easement cannot be built upon.

Attorney Pelech stated that the granting the variance would not injure the public or private rights of others. He stated that there are no public or private rights of others on this lot or on the surrounding lots.

He stated that he believes that granting the requested variance will not result in the diminution of values of the surrounding properties. He stated that the property has existed in its present state for over twenty years. He stated that the property values in the area have doubled, quadrupled, and even tripled, and that certainly they have not diminished by the fact that the basement of this property is used for a chiropractic office. He stated that there is no evidence whatsoever in any records of tax sales that any of the property values have diminished, and in fact, on the contrary, they have all increased substantially.

He stated that he believes the variance is consistent with the spirit of the Zoning Ordinance given the unique location of the property. He stated that were it not surrounded on three sides by undeveloped property and property that cannot be developed, then the situation would be different. He stated that he believes that because the property is basically at the end of the street, where nothing is in close proximity that can be developed, the variance is not contrary to the spirit of the Zoning Ordinance.



Attorney Pelech stated that it is not an intense use, and that there have been no neighbor complaints regarding this use. He stated that the records of the city are quite clear that no one has ever spoken about the use. He stated that it was only when the applicant approached the city to expand the parking lot onto Lot #80 that it was discovered that what was there was not in compliance with what was rendered back in 1978.

Attorney Pelech stated that he believes that substantial justice would be done by granting the variance, since the hardship upon the owner/applicant would not be out-weighed by any benefit to the general public. He stated that the chiropractic office that is currently there has a full compliment of patients who rely upon that location and that business for their healthcare. He stated that there would be no benefit to the general public to deny the variance of requiring the property to return back to 300 square feet, which would result in a substantial number of patients being unable to receive their chiropractic services in that location.

He stated that he believes that the value of the surrounding properties would not be diminished. He stated that there is no evidence that any of these properties have in any way been diminished. He stated that the chiropractic office has existed in its present state for over twenty years. He stated in conclusion that there are special conditions with regard to this property, and referred to the map, stating that the property is surrounded on three sides by land that can never be developed. He stated that these conditions exist such that literal enforcement of the Zoning Ordinance does result in an unnecessary hardship.

Attorney Pelech stated that he does not believe there is any fair and substantial relationship between the general purpose of Zoning Ordinance as it relates this particular piece of property given those special conditions. He stated that as he had indicated previously, there are no public or private rights of others that would be in any way injured. He stated that the variance would not be contrary and would actually benefit public interest to allow the property to remain as it is. He stated that it is consistent with the spirit of the Zoning Ordinance and that substantial justice would be done, and that there would be no diminution of the value of surrounding properties. He stated that this statement concluded his presentation, and that he would be happy to answer any questions.

Chairman LeBlanc asked how long the business had been using the entire lower floor.

Mr. Pelech responded that the business had been using the entire floor for approximately 20 some-odd years, and that it was in the very early 1980's. He stated that the variance of special exception was granted in 1978, and within a few years, the property was expanded due to the increase in number of patients.

Chairman LeBlanc stated that this is all in the left-hand side of the building.

Mr. Pelech stated that originally, it was approved for the left side, but that now the chiropractic office occupies the entire basement.

Chairman LeBlanc inquired about the parking lot use. Mr. Pelech stated that the parking lot on the right is used for the residential uses and that on the left (8 space parking lot) is used for the patients of the chiropractic office.

Chairman LeBlanc called for any questions from the Board.

Mr. Horrigan made reference to the tax map, to parking spaces that had been drawn in, and inquired as to whether this was the plan.

Attorney Pelech stated that the parking lot is approximately 80-90 feet, which equates to ten parking spaces.

Mr. Horrigan stated that he looked at the property and that cars were parked "all over the place" and that it looked like there may have even been cars parked on the city lot (Lot 89)

Mr. Pelech stated he would have to look at where the property line is to determine that.

Mr. Horrigan asked if that is what the applicant is proposing – to have a parking lot where the existing parking lot is. Mr. Pelech stated yes. Mr. Horrigan asked if it would be right up against the wetlands. Mr. Pelech stated that the parking lot goes to the property line. He stated that it is an existing, functional parking lot that has existed for many years, and that the applicants would like to leave it as it is.

Mr. Horrigan stated that the petition was triggered by a request for more parking. Mr. Pelech stated that the City originally agreed to allow the applicant to acquire the abutting City property, with the stipulation that no structures be built upon it, but that changed that to "nothing could be done to the land but to leave it in its natural state." Mr. Pelech stated that if the City property were to remain in its natural state, it would be of no benefit to his client. Mr. Pelech stated that during that attempt to acquire Lot 89, it was discovered that the chiropractic center occupied more space than allowed by the original variance.

Mr. Marchewka asked how this happened.

Mr. Pelech stated that it was a large, open basement, and that originally 300 square feet was partitioned off. As the chiropractic office needed more space, they simply added it.

Mr. Marchewka stated that they were not supposed to do so without coming back before the Board.

Mr. Parrott asked if there were any other visuals, other than the rough sketch provided, to add to the petition (photos or detailed drawings).

Mr. Pelech stated that what Mr. Parrott had been provided was all that was being submitted.

Mr. Parrott stated that he could not get much out of the rough sketch.

Mr. Pelech asked what more Mr. Parrott would like him to tell him. Mr. Parrott stated that he would like to see some documentation, but it is not here so it is not relevant. Mr. Parrott asked if he was correct in assuming that all structural work, electrical work and plumbing work was done without any permits. Mr. Pelech stated that it was his understanding that no permits were obtained from the Planning Department. Mr. Parrott asked Mr. Pelech whether or not he agrees with this. Mr. Pelech stated "I don't know. I have not been involved until recently, so I cannot say. But obviously if the Planning Department says there is no record of it. . ." Mr. Parrott asked, "So you don't disagree with it?" Mr. Pelech stated "No."

Mr. Holloway made a motion to table this matter until the applicant comes into compliance. He stated that without these permits, the Board could not extend the privilege of a variance if they are out of compliance.

Chairman LeBlanc stated that this would be the case except for the fact that the applicant has come before the Board to alleviate this problem. He stated that the applicant has come before the Board to get approval of what they have done.

Mr. Parrott stated that, as Mr. Holloway had stated, that though the applicant had not obtained permits or had the electrical and plumbing inspected, an approval would trigger full compliance.

Ms. Tillman stated that the City could not, at this point, issue any permits because the property is in violation. She stated that to obtain a variance would be the only way that the applicant could correct the violation, and then the applicant would have to apply for plumbing, electrical, etc., and go through that process. She stated that the plumbing inspector cannot issue a permit because the use should not be in a single resident zone in the entire basement of the building, unless the Board grants the variance.

Mr. Holloway confirmed for the Chairman that his question had been answered.

Mr. Parrott stated that he would argue that if the Board were to grant this, that would be in fact blessing what is there, and that the Board has no basis on which to do that whatsoever, because the Board does not know if anything over there was done in compliance other than the fact that the applicant went seven times what they were approved to do with respect to the space. He stated that that is all that the previous applicant approval was for. He stated that if the Board were to now say that is ok, that would be implicit approval in his mind of what has in fact been done up to this point in time, and would put the Inspection Department at a distinct disadvantage. He stated that he thinks that if the applicant wants to pursue this, the applicant ought to get it inspected first off.

Chairman LeBlanc interjected to state that the applicant does not have the option to have the property inspected.

Mr. Parrott stated that he believed they could have the property inspected.

Mr. Pelech stated that the applicant would have no problem getting the property inspected, but that getting a permit would be a problem.

Mr. Parrott stated that he would further argue that the Board would be acting on practically no information with respect to how the lot is actually being used now, let alone how it would be used in the future. He stated that there are no dimensions on any of the proposed parking area spaces or no set-backs. He stated that there was no virtually no information on which the Board could act.

Mr. Pelech stated, in response to Mr. Parrott's comments, that the building has not changed and that it has always been in existence. He stated that the set-backs are what they are, and that the parking has been in existence. He stated that the structure is the same structure that has always existed. He stated that the structure obviously meets the requirements of the Zoning Ordinance or it wouldn't have been allowed to have been built. Chairman LeBlanc stated that it meets the requirements for a 300 square foot office, not for what it is now. Mr. Pelech stated that he was talking about the set-backs of the building, because the question was whether or not the building complies with the set-backs.

Chairman LeBlanc called for any others who wished to speak to, for or against the petition. Hearing none, Chairman LeBlanc declared the public hearing closed.

### **DECISION OF THE BOARD**

Mr. Horrigan requested to discuss it for a minute. Mr. Horrigan stated that he agreed with Mr. Parrott that the Board has nothing in front of them. He believes it would be necessary for the Board to have more information in order to make an informed decision. Mr. Witham stated that his only comment to that is that it is the responsibility of the applicant to provide the Board with as much information as possible for the Board to make an intelligent decision, and that the applicant had chosen to give them a copy of the tax map. He stated that it hinders the applicant's case, but that the Board could move on and vote with what was provided, and that if it was not enough, then perhaps it would be in the negative.

Mr. Parrott made a motion to deny the petition. Mr. Horrigan seconded for discussion.

Mr. Parrott stated that the motion was based on several things, not the least of which is the fact that the Board has virtually no information. He stated that this had not come to the Board properly in his judgement to show them a tax map with "a few scratches on it" apparently indicating parking spaces (though they are not so noted as parking spaces). He stated that the Board likes to be acting upon reasonably good information, and that in his judgment, the Board did not have that, so it would be very difficult to determine whether private or public interests may be involved without at least some reasonable level of detail, which they get on most petitions. He stated that there has been no explanation of how this huge non-conformance came about and went along undetected for such a long period of time. He stated that he was particularly concerned with offices being created which imply at least power, and probably plumbing work as well, without the benefit of inspection by City inspection personnel, as all other property owners are obligated to do. He stated that therefore, if the Board were to approve 2300 square feet of office space, it would give an at least an implicit approval of what has been done. He stated that indeed, that was what was being asked of the Board -- that the Board approve the existing conditions without having been inside to see it, even if the members of the Board members were qualified to do plumbing and electrical inspections, to see whether in fact that was a reasonable use of the building.

Mr. Parrott stated that he could go on, but that he felt that was sufficient to indicate his concerns that the Zoning does not support this kind of use. He stated that he agreed that the property is in an odd location, but nonetheless that the Zoning applies to every square foot of the zone. He stated that this is a Residential Zone where 300 square feet is allowed for home occupation type of use. He stated that this is 2300 square feet of use. He stated that although the lot is of reasonably good size, it does not lend itself to adequate parking because the applicant is asking for back-out parking onto the street, which one could say is an indication that the lot is perhaps not big enough to support the recommended uses, which include a business as well as a residential facility.

He stated that for all of those reasons, he felt it would be at least premature for the Board to approve this petition, given the information that they had before them, with respect to the lack of detail and also with respect to the history of the property, with which the applicants' attorney has said he does not disagree.

Mr. Horrigan seconded for the discussion. Mr. Horrigan stated that he did share Mr. Parrott's concerns. He stated that he would add that he believed there was a public interest issue here, and that

he did not think the Board could confine its focus to one particular residential lot, which happens to abut the property. He stated that this is a residential neighborhood, and the public service company easement property across the road and the two city lots are a hideaway for this neighborhood. He stated that it gives the neighbors some feeling of living in an open environment, even though Route 95 does exist right behind at least some of the houses. He stated that he would have been very concerned if the Board had been presented a proposal to share the City property to the left of the site.

He stated that when he looked at the site, as he stated earlier, that there were cars “all over the place.” He stated that the cars stood out like a sore thumb, as the expression goes, and that he knew immediately which property was involved. He stated that he was concerned about this, and that it seemed to him that it would have some impact on the surrounding residential properties, and that it doesn’t belong in this neighborhood. He stated that he was surprised, and that although he does not use Edmond Street very much, he had never seen quite so many cars at this particular site, and that he felt it was inappropriate use of the property for this neighborhood. He stated that for these reasons, he supported Mr. Parrott’s argument.

Mr. Witham stated that he wished to echo something said by Mr. Horrigan. He stated that his concern was that it is easy to look at this lot, and to look at three sides of it, and use that as a unique setting. He stated that he still looked at the bigger picture, and that this is a neighborhood. He stated that this is the relationship between this restriction and the Zoning, and for that he felt that it would go against the spirit of the Zoning Ordinance to allow a business of this size in a neighborhood. Although it does have three unique sides, it is still a neighborhood. He stated that one of the other variances was to allow cars to back out into the street. He stated that there is a large volume of traffic flow here, and to have that back out onto the street would create a dangerous situation for the neighborhood, especially considering things like children riding bikes and whatnot, one does not expect in a neighborhood such as this to have a large volume of cars backing out into the street.

Mr. Marchewka stated that he was trying to figure out exactly what they were voting on, as he looked at it, it was an expansion of an existing use, from 300 square feet to 2300 square feet (though he did not see it as 2300 square feet – he thinks it is half of that because it is the lower level). Mr. Tillman interjected to state that 2300 square feet is the lower level. Mr. Marchewka stated that ordinarily, this Board would look at an expansion from 300 to 2300 square feet, and whether or not it would allow it by variance. He stated that the problem with this is that it is already occupied. He stated that he was not certain how to treat that, as he did not know how long it has been there. He stated that there is no indication of the history – whether it has been like that since 1978, or if it has expanded over the past few years. He stated that he found it a little confusing. Chairman LeBlanc stated that he thought the attorney had represented that it was actually from around 1982 that it was expanded to fill the whole basement, so the Board has an indication that it has been there for about 20 years. Mr. Marchewka stated that he still had trouble with a use that had already been expanded and come back to the Board for approval for a variance. He stated that he felt that was the issue here.

Mr. Jousse stated that he is not in support of motion to deny. He stated that it was his belief that 20 years ago people did not always get permits, or were not always aware that they might need a permit for one thing or another. He stated that he believed this was a natural expansion of the business. He stated that it was done around 20 years ago, and that it has been living in seemingly perfect harmony with the one neighbor that it has. He stated that Edmond Avenue is not a very much-traveled street, and there hasn’t appeared to have been any problems with vehicles backing onto the street. He stated that residents in this or any neighborhood can back out onto the street without getting a variance, so it

seems very odd that a business on the same street would need permission to back into the street from their parking area.

Mr. Jousse stated that when considering the subject of backing into the street, he believed the Board should take into consideration the type of clientele that would be visiting this establishment. He stated that the clientele would most likely be responsible people going to a place to get physical relief of one form or another, and that they would be conscientious drivers. He stated that he believed that the natural extension of the business was not done maliciously, or with the intent of circumventing the City Zoning Ordinance.

Chairman LeBlanc stated that he would support the motion to deny wholeheartedly. He stated that the organization has been there for 20 years, and that obviously if they were coming forth to get more parking, they might be trying to expand and increase their business. He stated that this is a residential area and that this is the first fact that the Board should look at when looking at this particular issue, and that because it is a residential area, there are different rules. He stated that backing out into the street is fine if one owns a home or lives there or if one is visiting people there, but when one has customers showing up at a site, that is an entirely different matter. He stated that because this is a residential area and the business is building seven times what was approved, that he saw no reason to grant this request, and that he felt denying it was the way to go.

Hearing no other comments from the Board, Chairman LeBlanc called for the vote to deny the petition. The motion to deny passed with a vote of 6-1, with Mr. Jousse voting against the motion to deny. The petition was denied.

***Excerpt of Minutes - 140 Edmond Avenue  
Board of Adjustment  
August 24, 2004***

***(Excerpt of Minutes approved at Board of Adjustment Meeting 28 September 2004)***

*11) Petition of **Bacman Enterprises Inc**, owner, for property located at **140 Edmond Avenue** wherein the following are requested: 1) a Variance from Article II, Section 10-206 to allow the entire lower level of the 2,300± sf building to be used as a chiropractic office where a 300± sf office and 5 parking spaces had been approved in 1978 in a district where such use is not allowed and 2) a Variance from Article XII, Section 10-1204 Table 15 to allow the additional required parking to back out onto the street and park one behind another. Said property is shown on Assessor Plan 220 as Lot 81 and lies within the Single Residence B district. Case # 8-11*

***SPEAKING TO THE PETITION***

*Attorney Bernard Pelech represented the owner/ applicant of the above property. Attorney Pelech made reference to the tax map distributed to the Board, and stated that Bacman Enterprises is on Lot #81. He stated that through the site is Interstate I-95, which he had highlighted in yellow. He stated that to the east are two undeveloped lots owned by the City of Portsmouth. He stated that Bacman Enterprises asked to acquire those from the City and that is how this whole thing came about. He stated that the City originally agreed, provided that something could be placed on there (the land), and that because of the wetlands, that would be probably difficult. He stated that across the street is 1.36 acres of wetlands, public service company's easement, which is vacant.*

*Attorney Pelech referred to the Planning Department Memo, stating that back in 1978, this Board granted a variance to allow 300+/- square foot chiropractic office, provided there were five parking spaces, and that the regularly scheduled office hours did not include Saturday or Sunday. He stated that in the intervening 26 years, the chiropractic business has grown, such that it now occupies the entire basement of this duplex. He stated that this structure has already been duplex, and that the Board in 1978 granted permission for 300 square feet in the basement to be used. He stated that at the present time, the entire basement is being used.*

*Attorney Pelech stated that the applicant is seeking to receive a permit to allow the 2300 square feet of the basement, or the remaining 1950 square feet of the basement, to be used for the chiropractic office. Attorney Pelech stated that he believes that the lot is a unique lot, being surrounded by I-95 on one side, undeveloped wetlands owned by the city on the other side, and a large public service company in the lot across the street. He stated that he would suggest that the zoning restriction, as applied, would interfere with the landowner's reasonable use of the property. He stated that the Board in 1978 felt that it would be reasonable to allow the chiropractic office to be there, given the unique location of this property. He stated that what had transpired in the 26 years is that the business has grown. He stated that the fact that the business has grown does not affect that fact that this is a reasonable use.*

*Attorney Pelech stated that he believes that no fair and substantial relationship exists between the general purpose of the Zoning Ordinance and its restriction on this property. He stated that if the property were surrounded by residential uses, he would not make this statement, but that he could (referring to the tax map) because only one side of the property is abutted by residential use, and there is no possibility that the other three sides would ever be used for residential purposes. He stated that the city would not allow its property to be used for residential purposes and that the public service company's huge easement cannot be built upon.*

*Attorney Pelech stated that the granting the variance would not injure the public or private rights of others. He stated that there are no public or private rights of others on this lot or on the surrounding lots.*

*He stated that he believes that granting the requested variance will not result in the diminution of values of the surrounding properties. He stated that the property has existed in its present state for over twenty years. He stated that the property values in the area have doubled, quadrupled, and even tripled, and that certainly they have not diminished by the fact that the basement of this property is used for a chiropractic office. He stated that there is no evidence whatsoever in any records of tax sales that any of the property values have diminished, and in fact, on the contrary, they have all increased substantially.*

*He stated that he believes the variance is consistent with the spirit of the Zoning Ordinance given the unique location of the property. He stated that were it not surrounded on three sides by undeveloped property and property that cannot be developed, then the situation would be different. He stated that he believes that because the property is basically at the end of the street, where nothing is in close proximity that can be developed, the variance is not contrary to the spirit of the Zoning Ordinance.*

*Attorney Pelech stated that it is not an intense use, and that there have been no neighbor complaints regarding this use. He stated that the records of the city are quite clear that no one has ever spoken about the use. He stated that it was only when the applicant approached the city to expand the parking lot onto Lot #80 that it was discovered that what was there was not in compliance with what was rendered back in 1978.*

*Attorney Pelech stated that he believes that substantial justice would be done by granting the variance, since the hardship upon the owner/applicant would not be out-weighed by any benefit to the general public. He stated that the chiropractic office that is currently there has a full compliment of patients who rely upon that location and that business for their healthcare. He stated that there would be no benefit to the general public to deny the variance of requiring the property to return back to 300 square feet, which would result in a substantial number of patients being unable to receive their chiropractic services in that location.*

*He stated that he believes that the value of the surrounding properties would not be diminished. He stated that there is no evidence that any of these properties have in any way been diminished. He stated that the chiropractic office has existed in its present state for over twenty years. He stated in conclusion that there are special conditions with regard to this property, and referred to the map, stating that the property is surrounded on three sides by land that can never be developed. He stated that these conditions exist such that literal enforcement of the Zoning Ordinance does result in an unnecessary hardship.*

*Attorney Pelech stated that he does not believe there is any fair and substantial relationship between the general purpose of Zoning Ordinance as it relates this particular piece of property given those special conditions. He stated that as he had indicated previously, there are no public or private rights of others that would be in any way injured. He stated that the variance would not be contrary and would actually benefit public interest to allow the property to remain as it is. He stated that it is consistent with the spirit of the Zoning Ordinance and that substantial justice would be done, and that there would be no diminution of the value of surrounding properties. He stated that this statement concluded his presentation, and that he would be happy to answer any questions.*

*Chairman LeBlanc asked how long the business had been using the entire lower floor.*

*Mr. Pelech responded that the business had been using the entire floor for approximately 20 some-odd years, and that it was in the very early 1980's. He stated that the variance of special exception was granted in 1978, and within a few years, the property was expanded due to the increase in number of patients.*

*Chairman LeBlanc stated that this is all in the left-hand side of the building.*

*Mr. Pelech stated that originally, it was approved for the left side, but that now the chiropractic office occupies the entire basement.*

*Chairman LeBlanc inquired about the parking lot use. Mr. Pelech stated that the parking lot on the right is used for the residential uses and that on the left (8 space parking lot) is used for the patients of the chiropractic office.*

*Chairman LeBlanc called for any questions from the Board.*

*Mr. Horrigan made reference to the tax map, to parking spaces that had been drawn in, and inquired as to whether this was the plan.*

*Attorney Pelech stated that the parking lot is approximately 80-90 feet, which equates to ten parking spaces.*



*Mr. Horrigan stated that he looked at the property and that cars were parked “all over the place” and that it looked like there may have even been cars parked on the city lot (Lot 89)*

*Mr. Pelech stated he would have to look at where the property line is to determine that.*

*Mr. Horrigan asked if that is what the applicant is proposing – to have a parking lot where the existing parking lot is. Mr. Pelech stated yes. Mr. Horrigan asked if it would be right up against the wetlands. Mr. Pelech stated that the parking lot goes to the property line. He stated that it is an existing, functional parking lot that has existed for many years, and that the applicants would like to leave it as it is.*

*Mr. Horrigan stated that the petition was triggered by a request for more parking. Mr. Pelech stated that the City originally agreed to allow the applicant to acquire the abutting City property, with the stipulation that no structures be built upon it, but that changed that to “nothing could be done to the land but to leave it in its natural state.” Mr. Pelech stated that if the City property were to remain in its natural state, it would be of no benefit to his client. Mr. Pelech stated that during that attempt to acquire Lot 89, it was discovered that the chiropractic center occupied more space than allowed by the original variance.*

*Mr. Marchewka asked how this happened.*

*Mr. Pelech stated that it was a large, open basement, and that originally 300 square feet was partitioned off. As the chiropractic office needed more space, they simply added it.*

*Mr. Marchewka stated that they were not supposed to do so without coming back before the Board.*

*Mr. Parrott asked if there were any other visuals, other than the rough sketch provided, to add to the petition (photos or detailed drawings).*

*Mr. Pelech stated that what Mr. Parrott had been provided was all that was being submitted.*

*Mr. Parrott stated that he could not get much out of the rough sketch.*

*Mr. Pelech asked what more Mr. Parrott would like him to tell him. Mr. Parrott stated that he would like to see some documentation, but it is not here so it is not relevant. Mr. Parrott asked if he was correct in assuming that all structural work, electrical work and plumbing work was done without any permits. Mr. Pelech stated that it was his understanding that no permits were obtained from the Planning Department. Mr. Parrott asked Mr. Pelech whether or not he agrees with this. Mr. Pelech stated “I don’t know. I have not been involved until recently, so I cannot say. But obviously if the Planning Department says there is no record of it. . .” Mr. Parrott asked, “So you don’t disagree with it?” Mr. Pelech stated “No.”*

*Mr. Holloway made a motion to table this matter until the applicant comes into compliance. He stated that without these permits, the Board could not extend the privilege of a variance if they are out of compliance.*

*Chairman LeBlanc stated that this would be the case except for the fact that the applicant has come before the Board to alleviate this problem. He stated that the applicant has come before the Board to get approval of what they have done.*

*Mr. Parrott stated that, as Mr. Holloway had stated, that though the applicant had not obtained permits or had the electrical and plumbing inspected, an approval would trigger full compliance.*

*Ms. Tillman stated that the City could not, at this point, issue any permits because the property is in violation. She stated that to obtain a variance would be the only way that the applicant could correct the violation, and then the applicant would have to apply for plumbing, electrical, etc., and go through that process. She stated that the plumbing inspector cannot issue a permit because the use should not be in a single resident zone in the entire basement of the building, unless the Board grants the variance.*

*Mr. Holloway confirmed for the Chairman that his question had been answered.*

*Mr. Parrott stated that he would argue that if the Board were to grant this, that would be in fact blessing what is there, and that the Board has no basis on which to do that whatsoever, because the Board does not know if anything over there was done in compliance other than the fact that the applicant went seven times what they were approved to do with respect to the space. He stated that that is all that the previous applicant approval was for. He stated that if the Board were to now say that is ok, that would be implicit approval in his mind of what has in fact been done up to this point in time, and would put the Inspection Department at a distinct disadvantage. He stated that he thinks that if the applicant wants to pursue this, the applicant ought to get it inspected first off.*

*Chairman LeBlanc interjected to state that the applicant does not have the option to have the property inspected.*

*Mr. Parrott stated that he believed they could have the property inspected.*

*Mr. Pelech stated that the applicant would have no problem getting the property inspected, but that getting a permit would be a problem.*

*Mr. Parrott stated that he would further argue that the Board would be acting on practically no information with respect to how the lot is actually being used now, let alone how it would be used in the future. He stated that there are no dimensions on any of the proposed parking area spaces or no set-backs. He stated that there was no virtually no information on which the Board could act.*

*Mr. Pelech stated, in response to Mr. Parrott's comments, that the building has not changed and that it has always been in existence. He stated that the set-backs are what they are, and that the parking has been in existence. He stated that the structure is the same structure that has always existed. He stated that the structure obviously meets the requirements of the Zoning Ordinance or it wouldn't have been allowed to have been built. Chairman LeBlanc stated that it meets the requirements for a 300 square foot office, not for what it is now. Mr. Pelech stated that he was talking about the set-backs of the building, because the question was whether or not the building complies with the set-backs.*

*Chairman LeBlanc called for any others who wished to speak to, for or against the petition. Hearing none, Chairman LeBlanc declared the public hearing closed.*

**DECISION OF THE BOARD**

*Mr. Horrigan requested to discuss it for a minute. He stated that he agreed with Mr. Parrott that the Board has nothing in front of them. He believes it would be necessary for the Board to have more information in order to make an informed decision. Mr. Witham stated that his only comment to that is that it is the responsibility of the applicant to provide the Board with as much information as possible for the Board to make an intelligent decision, and that the applicant had chosen to give them a copy of the tax map. He stated that it hinders the applicant's case, but that the Board could move on and vote with what was provided, and that if it was not enough, then perhaps it would be in the negative.*

*Mr. Parrott made a motion to deny the petition. Mr. Horrigan seconded for discussion.*

*Mr. Parrott stated that the motion was based on several things, not the least of which is the fact that the Board has virtually no information. He stated that this had not come to the Board properly in his judgement to show them a tax map with "a few scratches on it" apparently indicating parking spaces (though they are not so noted as parking spaces). He stated that the Board likes to be acting upon reasonably good information, and that in his judgment, the Board did not have that, so it would be very difficult to determine whether private or public interests may be involved without at least some reasonable level of detail, which they get on most petitions. He stated that there has been no explanation of how this huge non-conformance came about and went along undetected for such a long period of time. He stated that he was particularly concerned with offices being created which imply at least power, and probably plumbing work as well, without the benefit of inspection by City inspection personnel, as all other property owners are obligated to do. He stated that therefore, if the Board were to approve 2300 square feet of office space, it would give an at least an implicit approval of what has been done. He stated that indeed, that was what was being asked of the Board -- that the Board approve the existing conditions without having been inside to see it, even if the members of the Board members were qualified to do plumbing and electrical inspections, to see whether in fact that was a reasonable use of the building.*

*Mr. Parrott stated that he could go on, but that he felt that was sufficient to indicate his concerns that the Zoning does not support this kind of use. He stated that he agreed that the property is in an odd location, but nonetheless that the Zoning applies to every square foot of the zone. He stated that this is a Residential Zone where 300 square feet is allowed for home occupation type of use. He stated that this is 2300 square feet of use. He stated that although the lot is of reasonably good size, it does not lend itself to adequate parking because the applicant is asking for back-out parking onto the street, which one could say is an indication that the lot is perhaps not big enough to support the recommended uses, which include a business as well as a residential facility.*

*He stated that for all of those reasons, he felt it would be at least premature for the Board to approve this petition, given the information that they had before them, with respect to the lack of detail and also with respect to the history of the property, with which the applicants' attorney has said he does not disagree.*

*Mr. Horrigan seconded for the discussion. Mr. Horrigan stated that he did share Mr. Parrott's concerns. He stated that he would add that he believed there was a public interest issue here, and that he did not think the Board could confine its focus to one particular residential lot, which happens to abut the property. He stated that this is a residential neighborhood, and the public service company easement property across the road and the two city lots are a hideaway for this neighborhood. He stated that it gives the neighbors some feeling of living in an open environment, even though Route 95*

*does exist right behind at least some of the houses. He stated that he would have been very concerned if the Board had been presented a proposal to share the City property to the left of the site.*

*He stated that when he looked at the site, as he stated earlier, that there were cars “all over the place.” He stated that the cars stood out like a sore thumb, as the expression goes, and that he knew immediately which property was involved. He stated that he was concerned about this, and that it seemed to him that it would have some impact on the surrounding residential properties, and that it doesn’t belong in this neighborhood. He stated that he was surprised, and that although he does not use Edmond Street very much, he had never seen quite so many cars at this particular site, and that he felt it was inappropriate use of the property for this neighborhood. He stated that for these reasons, he supported Mr. Parrott’s argument.*

*Mr. Witham stated that he wished to echo something said by Mr. Horrigan. He stated that his concern was that it is easy to look at this lot, and to look at three sides of it, and use that as a unique setting. He stated that he still looked at the bigger picture, and that this is a neighborhood. He stated that this is the relationship between this restriction and the Zoning, and for that he felt that it would go against the spirit of the Zoning Ordinance to allow a business of this size in a neighborhood. Although it does have three unique sides, it is still a neighborhood. He stated that one of the other variances was to allow cars to back out into the street. He stated that there is a large volume of traffic flow here, and to have that back out onto the street would create a dangerous situation for the neighborhood, especially considering things like children riding bikes and whatnot, one does not expect in a neighborhood such as this to have a large volume of cars backing out into the street.*

*Mr. Marchewka stated that he was trying to figure out exactly what they were voting on, as he looked at it, it was an expansion of an existing use, from 300 square feet to 2300 square feet (though he did not see it as 2300 square feet – he thinks it is half of that because it is the lower level). Ms. Tillman interjected to state that 2300 square feet is the lower level. Mr. Marchewka stated that ordinarily, this Board would look at an expansion from 300 to 2300 square feet, and whether or not it would allow it by variance. He stated that the problem with this is that it is already occupied. He stated that he was not certain how to treat that, as he did not know how long it has been there. He stated that there is no indication of the history – whether it has been like that since 1978, or if it has expanded over the past few years. He stated that he found it a little confusing. Chairman LeBlanc stated that he thought the attorney had represented that it was actually from around 1982 that it was expanded to fill the whole basement, so the Board has an indication that it has been there for about 20 years. Mr. Marchewka stated that he still had trouble with a use that had already been expanded and come back to the Board for approval for a variance. He stated that he felt that was the issue here.*

*Mr. Jousse stated that he is not in support of motion to deny. He stated that it was his belief that 20 years ago people did not always get permits, or were not always aware that they might need a permit for one thing or another. He stated that he believed this was a natural expansion of the business. He stated that it was done around 20 years ago, and that it has been living in seemingly perfect harmony with the one neighbor that it has. He stated that Edmond Avenue is not a very much-traveled street, and there hasn’t appeared to have been any problems with vehicles backing onto the street. He stated that residents in this or any neighborhood can back out onto the street without getting a variance, so it seems very odd that a business on the same street would need permission to back into the street from their parking area.*

*Mr. Jousse stated that when considering the subject of backing into the street, he believed the Board should take into consideration the type of clientele that would be visiting this establishment. He stated*

*that the clientele would most likely be responsible people going to a place to get physical relief of one form or another, and that they would be conscientious drivers. He stated that he believed that the natural extension of the business was not done maliciously, or with the intent of circumventing the City Zoning Ordinance.*

*Chairman LeBlanc stated that he would support the motion to deny wholeheartedly. He stated that the organization has been there for 20 years, and that obviously if they were coming forth to get more parking, they might be trying to expand and increase their business. He stated that this is a residential area and that this is the first fact that the Board should look at when looking at this particular issue, and that because it is a residential area, there are different rules. He stated that backing out into the street is fine if one owns a home or lives there or if one is visiting people there, but when one has customers showing up at a site, that is an entirely different matter. He stated that because this is a residential area and the business is building seven times what was approved, that he saw no reason to grant this request, and that he felt denying it was the way to go.*

*Hearing no other comments from the Board, Chairman LeBlanc called for the vote to deny the petition. The motion to deny passed with a vote of 6-1, with Mr. Jousse voting against the motion to deny. The petition was denied.*

12) Petition of **James D. and Mary S. Reid, owners**, for property located at **93 State Street** wherein a Variance from Article II, Section 10-208(44)(a) as proposed is requested to allow a portion of the first floor of a building to be used residentially where such use will not be allowed by a proposed Zoning Ordinance amendment. Said property is shown on Assessor Plan 105 as Lot 20 and lies within the Central Business B and Historic A districts. Case # 8-12

### **SPEAKING TO THE PETITION**

Attorney Bernard Pelech represented the owner/ applicant of the above property. He stated that he hoped the members of the Board were familiar with the property, and that they had had time to review it and to look at the photos that had been submitted as part of the application. This is the so-called "Kingsbury House" and has a long historic history as a residential property. He stated that throughout the years, it was used for residential purposes. He stated that the property subsequently became owned by Strawberry Banke and it was used for Strawberry Bank offices and part of the house was used as a *retail* store. He stated that subsequent to the Strawberry Bank's ownership the wooden ell was non-residential used as the Gardener's Cottage or for retail, and the law office was in the brick portion. He stated that the Reids purchased it fully intending to utilize it as a residence.

Attorney Pelech stated that his clients, the Reids, are proposing to occupy the brick structure as their home and utilize the wood structure and the ell for "non-residential use." He stated that at the present time, it is an allowed use. He stated that there is, a pending zoning change which would make this a not allowed use. The amendment to the Zoning Ordinance which would require all first floor spaces in the entire central business district to be used for non-residential purposes.

Attorney Pelech stated that his clients are seeking a use variance from what is a proposed Zoning Ordinance, not the existing Zoning Ordinance, to allow roughly half of the first floor of this building to be used for residential purposes, and to allow the remaining half to remain non-residential. He stated

that in other words, the ell (the wooden structure) would remain non-residential and the brick structure would be residential.

He stated that this is a use variance, and that therefore the five criteria set forth in the Simplex case apply. He stated that he did not believe there would be any diminution of value of surrounding properties if the Board allowed the first floor to be used for residential purposes. He stated that, in fact, it would be a much less intense use and would create less noise and traffic congestion than perhaps another business office or retail store would create. He asked the Board members what they would prefer if they were to live across the street from this property – a residence on the first floor or Jack Quigley’s or a restaurant or some other non-residential use. He stated that he believed there was no question that it would not diminish the surrounding property values if it were residential.

Attorney Pelech stated that allowing the variance would not be contrary to the spirit and intent of the Zoning Ordinance. He made reference to the map, restating that approximately 50% of the first floor uses are residential and 50% are business

Attorney Pelech stated that the application for variance is not contrary to the public interest. He stated that he believed the public interest would be best served by allowing the first floor to be used for residential purposes for a number of reasons. He stated that it would provide a housing unit, it is a less intense use, it is more in keeping with the spirit of the neighborhood if not the Zoning Ordinance, and more in keeping with the history of the home. He stated that he believed it would be a shame to require a business to be put on the first floor.

He stated that he also believed that substantial justice would be done if the variance were to be granted. He stated that he did not believe that the hardship that would be put upon the owners would be outweighed by any benefit to the general public in saying “No, you must put a non-residential use on the first floor.”

He stated that in conclusion, he believed the five criteria necessary for the Board to grant the variance are met. He stated that this is a lot with special conditions, and that this would be a reasonable use that the applicant is proposing for the building, especially given the kitchen on the first floor. He stated that the special conditions include the fact that this is a historic, residential home. He stated that he believed all criteria are met, including the Simplex hardship criteria.

Chairman LeBlanc asked when the Reids had purchased the property. Attorney Pelech responded, stating that he believed they purchased it in late 2003 and began filing Historic District applications in April of 2004.

Chairman LeBlanc asked to clarify that prior to the Reids owning the property, it was used as a law office. Attorney Pelech stated that the ell was called the Gardener’s Cottage and sold gardening supplies.

Mr. Holloway asked to verify that the wooden structure would remain. Mr. Pelech stated that it would.

Chairman LeBlanc asked why the applicants would be coming before the Board at this point, when they took possession of the property and, he assumed, would be moving into it, what triggered the fact that they are here before the Board at this meeting. Ms. Tillman responded stating that the prior owners had been using the property for non-residential use, and the Reids had actually been doing exterior work (fixing windows, etc.) and had not actually applied for a change in use to convert it to a

single-family residence until after it went to first reading and they got caught in the middle of this situation where the kitchen was there, but they hadn't actually started working on the inside. They were doing exterior work on it.

Mr. Witham stated that for once he was on the side of Mr. Pelech. He asked why the applicants would need a permit if it is a permitted use. He stated fore the first reading (the effective date) residential use was permitted in that zoning district. He asked why they would need a permit to start using it for residential purposes, even if it had been used as a business prior to that. Ms. Tillman stated that they need a change in use application to change the use from the former use as a law office to a residential use, and that they hadn't actually applied to change it. She stated that it was allowed, and would have been signed off, but they had not done that before the first reading. She stated that the applicants are stuck in limbo until the Zoning Ordinance is or is not adopted. She stated that right now the City Council and Planning Board are working on an overlay which will exempt certain sections (perhaps Sheafe Street and other areas that are truly residential), but that is still being worked on. She stated that they can continue to go forward with the renovations, but they chose to come forward and ask for a variance to allow them to continue with their renovations to a single-family with an attached non-residential use in the wooden section.

Chairman LeBlanc called for anyone wishing to speak to, for or against the petition. Seeing no one rise, he declared the public hearing closed.

### **DECISION OF THE BOARD**

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

Mr. Horrigan stated that he would like to go to the hardship criteria, in particular the second criteria on the "no fair and substantial relationship exists between the general purpose of the Zoning Ordinance and the specific restriction on the property." Mr. Horrigan stated that he would assume that the applicants do need a variance, even though they are caught in the middle of the Zoning Ordinance change. Mr. Horrigan stated that it was his understanding that the new Zoning Ordinance change was based on what is called "New Urbanism," or other such titles, the idea being that the City Planners wish to create a reliably central business area. He stated that one method of obtaining it is to reserve the first floor of buildings for non-residential use.

Mr. Horrigan stated that in this case, what strikes him with this particular property is that 1) it is a freestanding building that has a long history of being a residence, 2) it exists on what he would call the fringe of the central business district, and 3) he believes it would have limited potential for many of the uses that would be implicit in the newly developed Zoning Ordinance. He stated that at best it would probably be an office, and that is essentially what it has been used for in recent years. He stated that even if the Zoning Ordinance was already changed, he believes that the Board could establish that there is a hardship on this particular property that doesn't really fit the general purposes of the new change forthcoming in the Zoning Ordinance.

Mr. Horrigan stated that, again, that also applies to the first criteria. He stated that the unique setting really is the location of this building. He stated that unlike most other buildings in the central business district, it exists separately, it is on a very heavily traveled street. He stated that by the time the traffic is going by the building, it is "zooming by." He stated that it is a building that has to be a specific destination if it were to be a business.

He stated that he did not see any public or private rights being harmed by this. He stated that a residential use is clearly a reasonable because that is the use for which the building was originally constructed.

Mr. Horrigan stated that overall, granting the variance is consistent with the spirit of the Zoning Ordinance. He stated that as far as the value of the surrounding properties is concerned, the current owners have been carefully renovating this building and working with the Historic Commission, so he does not see how the values of the surrounding properties would be diminished.

Mr. Witham seconded the motion, stating that he agrees with Mr. Horrigan. He stated that when voting on this variance request, the Board should look at its intent. He stated that at times he believes he understands the intent of the proposed zoning change, but at other times he is not sure he understands it. He stated that this is a historic home and to ask it to be something else does not seem to be reasonable to him. He stated that he has seen historic homes converted to offices and businesses, and that they have been butchered in the process. He stated that the City should support the applicants in their effort to restore a historic home. He stated that his concern, as he has been following the proposed amendment, is a project such as this, and how the Board would be getting many of these before it.

Mr. Marchewka stated that he would feel much differently if the property were a vacant piece of land that someone was trying to build a home upon, but it is already a home and was built as a home. He stated that it is a home that was adapted over the years to retail and office uses, and has since changed back to a home. Mr. Marchewka stated that it is not an office building that has been adapted as residential. He stated that as it exists now by the current owners, it is a home. He stated that it has a kitchen that no office would ever conceive of putting in (maybe a retail establishment that sold food). He stated that obviously it is a kitchen meant for a residence, and that it would be a gross injustice to tell the applicants that they have to change it back into an office. He stated that for these reasons, he is in support of the motion to grant the variance.

Chairman LeBlanc called for the vote to grant the variance. The petition was passed with a unanimous vote.

13) Petition of **David J. and Vasilia Tooley, owners**, for property located at **166 Newcastle Avenue** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) are requested to allow: a) a 3'10" x 17'6" covered entry with a 4'6"± right side yard where 10' is the minimum required and a 21'± front yard where 30' is the minimum required, b) an irregular shaped 272 sf 2 ½ story rear addition with a 3'± left side yard where 10' is the minimum required and a 10" rear yard where 30' is the minimum required, c) a 10' x 15' pergola with a 4±' right side yard where 10' is the minimum required and a 1±' rear yard where 30' is the minimum required d) 55% building coverage where 20% is the maximum allowed; and, e) 27% open space where 40% is the minimum required. Said property is shown on Assessor Plan 101 as Lot 24 and lies within the Single Residence B and Historic A districts. Case # 6-11, Case # 7-8, and Case # 8-13

This petition was withdrawn.



14) Petition of **6-16 Congress Street LLC, owner**, for property located at **6-16 Congress Street** wherein a Variance from Article XII, Section 10-1201(A)(2) is requested to allow a 16' wide accessway ramp to enter / exit a lower level parking garage. Said property is shown on Assessor Plan 117 as Lots 37, 38, & 39 (to be consolidated) and lies within the Central Business B and Historic A districts. Case # 7-13

### **SPEAKING TO THE PETITION**

My name is Steve McHenry of McHenry Architecture. He stated that he would like to give a brief overview of the project. He stated that because of the significance of its downtown location, and its size and impact on the downtown area.

The building is a four to five story building. He stated that he had brought in a couple of renditions that have been designed. He stated that the renditions show views from Market Square and both Church and Congress Streets. He stated that he wanted to be clear that the parking lot that is being proposed with this project is 25 spaces of below grade parking. He stated that it is important to also know that those spaces would not be public parking spaces, but would be owned by owners of the mixed-use spaces in the building that we have described. He stated that the street level and first level construction would be retail and commercial, the second level is for office use, and the third, fourth and fifth levels are 18 residential condominiums. He stated that hence, each condo would have a parking space, and all of the other spaces within the building would also each own a parking space.

Mr. McHenry stated that it is important to know this because property-owned spaces are used differently than public ones, and the design is also for passenger cars only. He stated that the question would arise as to why it is designed the way it is, and why the building is the way it is. He stated that he would do a quick review of the existing condition of the site. He stated that there is a commercial building on the site now behind our building that abuts their own parking lot with two curbs that open onto Congress Street. He stated that they vary in size from 14' – 20'. He stated that there are 28 surface parking spaces in that parking lot. He stated that along Congress Street, there are four angled parking spaces that are public spaces. He stated that access to this site and the site lines are issues that are something to be considered. He stated that with the site lines and the parking lot as they are now, are very limited.

Mr. McHenry stated that he wanted to present to the Board three letters of supporting abutters that address the issue of parking and general support for the project.

Mr. Marchewka requested that Mr. Benjamin of the McGuire Group explain the technical aspects of the design as it is presented. Mr. Witham asked whether there would be doors to the garage. Mr. McHenry stated that there would not be doors, that it would be an open entrance with a gate-down curtain, but that there would not be any solid door. Mr. Witham asked further how the applicants would prevent the general public from driving down into the below grade parking area. Mr. McHenry stated that there would be signage. Mr. Witham then asked, if the applicants have a 16' wide access way, what would be required (versus what is being requested). Mr. McHenry stated that he hadn't explained that because it would be time consuming.

Mr. Royd Benjamin with the McGuire Group stepped forward to speak to the petition. He stated that he is the traffic and parking design engineer, and that the applicants had originally retained McGuire Group to review their original design submission. He stated that John Burke had some concerns with

the widths of the openings on Church Street and the possibility that when one vehicle is exiting, that an entering vehicle would not be able to get in and that that would cause backups on Church Street.

He stated that he met with the applicants and they revised the opening by increasing the width by 2' and modifying the sidewalk on the way in. He stated that they set it from a 17' opening to immediately a 15' opening as they had previously had now had a 19' opening that is tapered down gradually to the 16' that they have to have. He stated that there should be a diagram in the packet that shows the capability of two passenger vehicles to enter and exit that driveway at the same time, based on national turning templates. He stated that he wanted to note that the national turning templates use a 6' x 20' passenger car vehicle, such as a Suburban, so he is very comfortable that passenger cars could get in and out of that entry at the same time.

He stated that he is also comfortable with the 16' width down-ramp. He stated that it is not 16' wide for a very long time, and that the drivers should be driving slowly. He stated there would be a gate, and that there should not be any high speeds, and would actually encourage slow speeds. He stated that he would rather see a compromise to the ramp than a compromise to what is inside the garage. He stated that it is much safer to have the standard widths inside underneath the building and the auto movement go on inside. He stated that on the ramp they would just be travelling past one another and it should be perfectly safe at 16'.

Mr. Alec McEachern stepped forward to speak to the petition. He stated that first he would like to go to the actual section of the Zoning Ordinance that is in question, Section 10-1201(A)(2), "Design Standards." Mr. McEachern stated his particular section is the dimensional requirements, and the Zoning Ordinance reads that parking spaces and maneuvering aisles shall be laid out in compliance with the minimum dimensions set forth in the following table. He stated that the table is entitled "Minimum Parking Space and Aisle Dimensions for Parking Areas" and provides a variety of backers, angular parking, width of parking space and width of maneuvering aisle. He stated that in this situation, the Planning Department in doing the application has determined that there was a 24' maneuvering aisle width for the access ramp. He stated that this is the reason the application has been submitted.

He stated that the 16' width is functionally sufficient to allow two vehicles to pass in opposite directions, and is the maximum width that the access ramp can obtain without infringing on the otherwise conforming underground parking area. He stated that what is being presented, as indicated in the plan, is an underground parking area and this ramp accesses that area. He stated that the underground parking area conforms to the Zoning Ordinance. He stated that it provides the correct dimensions for the parking spaces and also for the maneuvering aisles in between the parking spaces. He stated that according to the Zoning Ordinance, that the width of the maneuvering aisle is a function of the angular parking. He stated that it talks about what the angle of the parking space is, and the width that is required for the maneuvering area. He stated that this is where it ties in to the presentation. He stated that as an initial matter, the applicant maintains that the minimum dimensions set forth in the Zoning Ordinances only apply to parking spaces and maneuvering aisles and access drives, such as the access ramp.

He stated that nevertheless the application does meet the criteria for the variance. He stated that he would now go through those criteria. He stated that the first is that granting the variance would not be contrary to the public interest. He stated that, as indicated in the "Priorities for Action" section, in page 4 of the City's proposed Master Plan, the public has an interest in pedestrian friendly streets, maintaining and adequate supply of convenient parking, and requiring floor uses to promote economic

vitality. He stated that granting the variance in this case would allow the applicant to construct an underground parking area, and that this would increase pedestrian safety by eliminating the two existing curb cuts on Congress Street, which is a main pedestrian thoroughfare. He stated that it would help to maintain an adequate supply of convenient parking by maximizing the onsite parking, actually increasing the number of on-street parking spaces. He stated that in addition, it would free up the applicants' ground floor, which otherwise might have to be used to provide parking. He stated that it would be used as retail space instead of parking. He stated that the applicant submits that the requested variance furthers the public interest as stated in the proposed Master Plan.

Mr. McEachern stated that secondly, special conditions exist, as such that literal enforcement of the Zoning Ordinance would impose an unnecessary hardship. He stated that under the Boccia case, recently decided upon this year, the hardship elements for the area is what they are dealing with. He made reference to the first element, that an area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property. He stated that as described, the applicant is proposing to build an underground parking area, which would be accessed by a 16' wide access ramp. He stated that due to the narrow, rectangular shape of the property, the only technically feasible location for the access ramp is to align it along the access of the rear property line, which requires the entry to be on Church Street. He stated that requiring a 24' wide ramp in this case would greatly decrease the space available in the underground area, resulting in the need for additional variances, due to the fact that the parking that is currently being proposed would not longer be able to meet the dimensional requirements of the Zoning Ordinance. He stated that the Zoning Ordinance provides that one must have a certain width of parking spaces and you have to have a certain width for the maneuvering aisle interfacing those spaces which allows people to turn into the space and to back out safely. He stated that the applicant's current design is right on the border with those dimensions in the actual parking area itself, because if they were required to go wider on the access ramp, it would impinge on the parking area, which would require further variances.

He stated that the second requirement on the Boccia is the benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance. He stated that the benefits of an underground parking area cannot be achieved by any other reasonable method. He stated that the only feasible method to reach an underground parking area is to construct a ramp as proposed.

He stated that the third element of the variance is that the variance will not be contrary to the spirit and intent of the Zoning Ordinance. He stated that he felt it would be worth it to break the Zoning Ordinance down to get exactly what the spirit and intent is. He referred to Section 10-1201, paragraph 2, "Design Standards," which provides the design standards, required for parking in all districts unless otherwise noted. He continued to quote from the standards, stating that parking areas and access drives shall be surfaced with bituminous concrete, asphalt, gravel or crushed stone. He stated that it is significant that there is a specific reference in the Zoning Ordinance to access drives because (making reference to a sentence that precedes the "Table of Dimensional Requirements") "parking spaces and maneuvering aisles shall be laid out in compliance with the minimum dimensions set forth in the following table." He stated that the Zoning Ordinance does not say "access drives," but rather says "parking spaces and maneuvering aisles." He stated that when looking at the Table of Dimensional Requirements, which is titled "Minimum Parking Space and Aisle Dimensions for Parking Areas," the width of the maneuvering aisle is a function of angle of the parking. He stated that this indicates to him that the intent of the Zoning Ordinance is to provide a sufficient space in the parking area for vehicles to turn in and back out safely. He stated that the table does not include any reference to access drives, which is what the application is addressing.

He stated that if the spirit and intent of the Zoning Ordinance is to provide sufficient maneuvering room for vehicles as they try to turn in and back out of parking spaces, and the width of the maneuvering aisle is a function of the angle of the parking spaces, then the granting of the variance in this case will not be contrary to the spirit and intent of the Zoning Ordinance because there is no parking on the access ramp. He stated that there is no need to provide maneuvering room on the ramp, and that it is strictly for traffic (that there is no parking). He stated that the Zoning Ordinance only recognizes that access drives, parking spaces and maneuvering aisles are separate items, and specifically notes the application of the dimensional requirements of parking spaces and maneuvering aisles.

Mr. McEachern stated that granting the requested variance would result in substantial justice. He stated that the granting of the variance in this case would result in substantial justice in this case because it would allow the applicant to use his property in a manner which furthers the goals stated in the City's Master Plan, providing functional and sufficient means for vehicles entering and exiting the applicant property. He stated that granting the variance will not diminish surrounding property values. He stated that whether the access ramp is 16' wide or 24' wide would not affect surrounding property values because it is contained within the structure of the building. He stated that if one is in the Porter Street Condominiums or one is in the North Church, one would not be able to tell whether the access ramp is 16' or 24' wide because it is inside the building. He stated that as proposed the construction of the entrance to the ramp is going to increase the site lines. He stated that the applicant further proposes to improve the look of the sidewalk along Church Street in this area as far as the entrance to the access ramp, which would also tend to increase the value of surrounding properties. He stated that the 16' driveway ramp will not result in any reduction in value of the surrounding properties.

Mr. McEachern stated that for all of the foregoing reasons, the applicant submits that each of the 5 criteria to obtain a variance in this matter have been met.

Mr. Horrigan stated that the concern of the Giles is that the barrier to the entrance will somehow inhibit their view as far as exiting out of this structure. He stated that he would assume that cars trying to come out of the new alley behind the Porter Street condominium would obstruct their view. He asked Mr. McEachern whether or not he felt that this was a feasible argument. Mr. McEachern responded that he felt that the Board should look at the existing conditions, as Mr. McHenry testified, that currently the existing structure comes right out of the house on the edge of the property line on that corner. He stated that what would happen under the applicant's plan would be that the actual entrance to the ramp would be set back, which would improve the site lines of any vehicle coming out of the Porter Street condo alley and allow greater visibility than Church Street to see oncoming traffic.

Mr. Horrigan asked whether there could be an exit mirror attached. He stated that he tried to understand their (the Giles') argument, and that it seemed to him that one of those mirrors would remedy the situation. Mr. McEachern stated that he felt that it was really an issue that site review has been able to deal with. He stated that if such a mirror would help, that the applicant would not be opposed to that.

Mr. Horrigan stated that he had one more question, in regard to the second hardship criteria, he had read the Giles letter, and that it did raise one issue that he felt should be addressed. He asked whether it was correct to assume that there was no other place that the entrance to the building could be located. Mr. McHenry responded that the entrance would need to be from the street. Mr. Horrigan stated that he was looking at Porter Street alley, and Mr. McEachern responded that it was private property. Mr.

Horrigan stated that this was essentially the only place to locate the entrance. Mr. McEachern responded that it was the only choice. Mr. Horrigan re-stated that there really was no other feasible method, and Mr. McEachern agreed. Mr. McEachern stated that, again, it goes to how to construct a ramp, and the grade, in the sense that one really couldn't do it from Congress Street even if that would be what one wanted to do because there is not enough depth in the lot.

The Chairman called for anyone wishing to speak to, for or against the petition. Seeing no one rise, he declared the public hearing closed.

The Chairman then stated that he had forgotten to read the letter from the Giles, which was in opposition. He quoted the letter verbatim. The letter stated that the Giles own the townhouse at 30 Porter Street, located directly behind the petition's proposed development. The purpose of the letter was to object to the request for a variance to build a 15' wide access ramp for entering and exiting the lower level apartment garage. The Chairman stated that the letter had been mentioned already, and that the content had been mentioned already. The Chairman called for the Board's decision.

### **DECISION OF THE BOARD**

Mr. Parrott made a motion to grant the variance as presented. Mr. Witham seconded the motion. Mr. Parrott stated that it was apparent to him that there was a good deal of thought and effort put into the design to try to reach an intelligent compromise, and the objective would be to provide off-street, out of sight parking. He stated that he felt the overall design would be a net gain for the city. He stated that the choices for accessing off-street parking because of the configuration down there and the basic congestion of the area are pretty limited, so this would probably be the best design that can be achieved to get the end result that is desired. He stated that where the structure is located is off the beaten path, that it is not central but is a side street. He stated that there should be relatively light pedestrian traffic compared to other streets in the general vicinity. He stated that for these reasons, he felt that the design makes sense and is worthy of the Board's support.

Mr. Witham stated that he thinks that the Boccia case is one where somebody could say "make it 24'" without having built it yet. He stated that, as stated earlier, he couldn't find in the Zoning Ordinance what the required width is and for him, it was still a gray area. He stated that he went through the same exercise that the attorney presented, and he spent 15-20 minutes trying to figure out what the width should be. He stated that the Zoning Ordinance, to him, definitely separates access drives from maneuvering aisles and if it is going to talk about them differently and define them differently, they should be addressed differently in terms of required widths. He stated that the Zoning Ordinance does give a maneuvering aisle width of 24', but for him, he thinks the intent was for people pulling in and out of parking spots, and that's what they needed to maneuver in and out of parking spots. He stated that he didn't see that as the width required as an access drive.

Mr. Witham stated that for him, it was still a gray area, and he doesn't see that the intent was for it to be 24' because the Zoning Ordinance doesn't say that access drives are required to be 24', it says maneuvering aisles. Mr. Witham stated that what he looked at was the width of a parking space. He stated that the Zoning Ordinance says that two parking spaces side by side should be 17', which would allow both cars to be parked and to open their doors. He stated that if 17' is adequate for two cars to be parked side by side and open their doors, 16' is wide enough for two cars to pass by. He stated that he felt the intent of the Zoning Ordinance was to create a safe situation for cars to pass.

He stated that he also looked at a typical garage that is double wide, and he had a 16' wide garage door, and that is for two cars to pull in and out of a garage, and that is backing out. He stated that, again, he used that as a criterion. He stated that also, he looked at the loading for a loaded truck, loaded girth, that the width needs to be 12' and essentially, asking the applicant to make it 24' is asking them to make it wide enough for a loading dock. He stated that in regards to the abutter's concern, he felt that making the width wider would have a minimum effect on visibility. He stated that for these reasons, he supports the motion to grant, because in his mind, it is a gray area, where a maneuvering aisle isn't specifically the same as an access ramp.

Mr. Horrigan stated that he had two comments to make on the public interest, in a very general way. He stated that this particular building has suffered some criticism from the newspaper, and he would like to state that he likes the design very much and that he thinks it is one to be proud of when it is constructed. He stated that he felt that anything that might be done to detract from the integrity of the design would be a mistake. He stated that he sensed that widening the entrance might begin to have some impact on the overall appearance of the building and perhaps even the structural integrity.

Mr. Horrigan stated that he has another public interest that is very dear to his heart and that is the sidewalks. He stated that this particular stretch of sidewalk is a very nasty, narrow sidewalk, and that he is thankful that the developers are going to improve upon the situation.

The Chairman called for the vote to grant the petition as presented and advertised. The petition was granted with a unanimous vote.

## **ADJOURNMENT**

Upon motion duly made and seconded, the meeting adjourned at 9:30 p.m.

Respectfully submitted,

Lori J. Becker  
Acting Secretary

**NOTE:** Mr. Holloway made a motion to adjourn. The motion was seconded and unanimously approved to adjourn the meeting.

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

Mary E. Koepenick  
Secretary