

MINUTES OF THE BOARD OF ADJUSTMENT MEETING

**PORTSMOUTH, NEW HAMPSHIRE
CITY COUNCIL CHAMBERS**

7:00 P.M.

September 28, 2004

MEMBERS PRESENT: Chairman Charles LeBlanc; Vice-Chairman James Horrigan; Alain Jousse, Bob Marchewka, Alternate Steven Berg and Alternate Duncan MacCallum

MEMBERS EXCUSED: David Witham, Nate Holloway

ALSO PRESENT: Lucy Tillman, Planner

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**I. APPROVAL of EXCERPT of MINUTES for Bacman Enterprises, Inc., Applicant, for property located at 140 Edmond Ave.**

Chairman LeBlanc stated that the first order of business was approval of draft Minutes for the case that would be coming before the Board that evening for re-hearing. He called for any corrections to the Minutes. Mr. Parrot stated that he had two comments. He stated that the Minutes should not state that he was excused from the hearing because he is quoted in the Minutes and clearly he did participate. He stated that on page 6, the fourth paragraph, middle of the second line, it reads: "information with respect to the market detail and with respect to the history, etc." He stated that he did not know what "market" means and he doubted that he had said that. He stated that the more likely word would be "marked" because that would fit and make sense. Ms. Tillman stated that they would check the tape.

Mr. Horrigan stated that he had a somewhat more subjective general problem with the statement attributed to him on page 5, toward the bottom, under "DECISION OF THE BOARD," which states that he had requested to discuss the petition before they made a decision. He stated that it said "The Board requires more information before it can make a decision." He stated that he is not sure exactly what he had said there, but that his purpose was to raise an inquiry because a number of comments had been made during the discussion preceding their decision, during the public hearing, that they needed more to go on. He stated that he would think that probably the sentence should indicate that he "asked" that the Board require more information, because then Mr. Parrot's reply makes more sense and explains why we should go ahead. He stated that as it stands, it looks like he said that they could not make a decision, and that he went ahead and seconded the motion. He stated that it was a very curious description of what happened. Chairman LeBlanc stated that they would check the tape and correct it. Mr. Horrigan stated that he felt like Ray Charles with that hit record, "What did I say?"

Chairman LeBlanc asked if he could have a motion to accept these draft Minutes for approval. All Board members were in favor of approving the draft Minutes, and they were accepted.

**II. OLD BUSINESS**

A) Request for Re-Hearing for Petition of Bacman Enterprises, Inc., applicant, for property located at 140 Edmond Ave. Said property is shown on Assessor Plan 220 as Lot 81 and lies within the Single Residence B district.

## DECISION OF THE BOARD

Mr. Jousse made a motion to grant the re-hearing. Mr. Parrot seconded the motion. Mr. Jousse stated that it was just alluded to in some of the comments that were made about the preceding Minutes, and again brought it up, the fact that some members of the Board voiced their opinion that they needed more information. He stated that the usual procedure that they have done in the past when they needed more information, was to table the application until all of the information that they sought had been provided to them. He stated that he felt that that is what the Board should have done, to give the applicant the opportunity to bring the information that has been mentioned that was lacking, and that they should grant the applicant the chance to present the case with all of the information that they are seeking. Mr. Parrot stated that he had only seconded for discussion, because he felt that the discussion was pretty thorough, and that he didn't feel that it was the responsibility of the applicant to present meaningful information that they could really look at in an objective way, with dimensions and labels and so on and so forth, so that they could understand the request and also some explanation.

Chairman LeBlanc stated that he would not support the motion. He stated that he thought that everything was made clear during the discussion that they had, and he did not see anything new or any errors that were made. He called for any other comments from the Board. Mr. MacCallum stated that he did not see anything particularly telling that would justify a new decision on the issues. He stated that he would be voting against the motion.

Chairman LeBlanc called for any additional comments from the Board, and hearing none, called for the vote to grant the request for re-hearing. In a 1-5 vote, the motion to grant failed, and therefore the request was denied. Mr. Jousse voted in favor of granting the re-hearing. Voting against the petition were Mr. Berg, Mr. Horrigan, Mr. LeBlanc, Mr. MacCallum and Mr. Parrot.

## PUBLIC HEARINGS

8) Petition of **Richard J. Menard, owner**, for property located at **137 Elwyn Avenue** wherein a Variance from Article IV, Section 10-402(B) was requested to allow a 24' x 24' detached one story garage with a 5' left side yard and a 10' rear yard where 12' is the minimum required in each instance. Said property is shown on Assessor Plan 112 as Lot 48 and lies within the General Residence A district. Case # 9-8

## SPEAKING TO THE PETITION

Mr. Menard stepped forward to speak in favor of his petition. He stated that he had been before the Board a few times, and that the reason he was back was that the Board had approved him on the footprint of the building and he didn't realize it when he put it in that he had put it in at the most basic, inexpensive structure. He stated that since then, he had decided he wanted to build a 24' x 24' garage only if he would be able to utilize all of the space within the garage. He stated that he has four motorcycles to put inside the garage in the wintertime, so it doesn't leave a lot of floor space. He stated that at the same time, what he was going for was making the height of the structure such that there would be storage up above the garage. He stated that he was sure the Board members had come by his house and had seen the huge hole in his back yard.

Mr. MacCallum asked if the footprint would remain the same. Mr. Menard stated that the footprint would stay exactly as it was. Mr. MacCallum asked Ms. Tillman why the minimum had changed for

the left side yard. Ms. Tillman stated that it is based on the height and that it is either 10' or 75% of the height of the structure which ever is greater. She stated that because he had changed his design of the height of the structure, it now dictates a larger yard setback requirement, so with the change in the height, even though the footprint hasn't changed, the requirement changed.

Mr. Parrot asked how much that change in pitch translated to a vertical height. Mr. Menard stated that he would estimate 6' – 7' (a 4' on 12' to an 8' on 12'). Mr. Menard stated that it was a 4' on 12' to an 8' on 12' pitch, so they were really looking at 8', so it would be 4' higher. Mr. Parrot stated that that made more sense (than 6'-7' higher).

Chairman LeBlanc called for anyone else wishing to speak to, for or against the petition, and hearing none, declared the public hearing closed.

### **DECISION OF THE BOARD**

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

Mr. Horrigan stated that he wanted to note that this was a very minor change compared to what the Board had previously heard in their June meeting. He stated that it is the rear yard set-back, but that in this case, the rear yard fronts McNabb Court, which could be described as an alley way but is actually a street servicing a few other houses. He stated that the issue of its impact on abutters really doesn't arise in any significant way relative to McNabb Court, and that if it were going to have any impact it would be on the abutters on Elwyn Avenue on either side. He stated that the applicant really was not requesting to change anything there, that it was still a 5' left-side yard.

He stated that in any event, what the Board had was a small change in the height and that he did not see any overriding public interest problem here with the change that the applicant was proposing. He stated that he could not visualize any additional impacts this would have on the abutting properties. He stated that as far as the hardship was concerned, he would not go through in detail because the Board had already heard this once before. He stated that it was really the only place that a garage could be reasonably located on this property, and all that the Board was dealing with really was the height. He stated that given that the applicant desires a garage, which he thought was reasonable, that this was about the best configuration the Board could hope for. He stated that he could not imagine any other method the applicant could choose that could be feasible in this case.

He stated that he felt that what the applicant was asking for was within the spirit of the Ordinance, and that substantial justice would be done in this case by allowing the applicant to have a garage. He stated that, as he had said before, he did not see any issues here with the values of surrounding properties, and that in fact, he felt it might be a slightly better looking garage.

Mr. Berg stated that in looking at the site plan and seeing where the garage was (as he understood, that was now gone), that this proposed garage was a little more conforming or less non-conforming than the prior garage. He stated that at least of three of these neighboring properties have a garage, and that two of them appeared to be equally as tall, if not taller, than what the applicant was requesting with the proposed garage. He stated that the only real change was that the applicant was asking for something slightly taller, requiring more of a set-back variance. He stated that he saw the request as being completely in line with what was currently in the neighborhood, and that the proposed garage would be no more non-conforming.

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

9) Petition of **Deborah C. and Harry D. Hobbs owner**, for property located at **489 Sagamore Avenue** wherein a Variance from Article III, Section 10-301(A)(2) was requested to allow a 24' x 24' one story with basement 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 # 9-9

Chairman LeBlanc stated that they had a notice that this petition is being asked to be tabled until next month because of the limited number on the Board. He stated that Mr. Parrot would have stepped down, and Mr. Marchewka (though he had not yet arrived) would also have stepped down. He stated that they would only have five members to hear the petition that night. He called for a motion to table the petition. Mr. Horrigan made the motion to table it. All other Board members were in favor and the petition was tabled until next month.

10) Petition of **150 Greenleaf Avenue Realty Trust, James G. Boyle Trustee, owner**, for property located at **150 Greenleaf Avenue** wherein an Appeal from an Administrative Decision was requested concerning the determination that parking of vehicles "For Sale" is "outdoor storage" as defined by Article I.

Notwithstanding the above, if the Administrative Appeal was denied, a Variance from Article II, Section 10-208(35) was requested to allow the outdoor storage of vehicles upon existing pavement within 200' of a residential district where a 200' buffer to a residential district is required. Said property is shown on Assessor Plan 243 as Lot 67 and lies within the General Business district. Case # 9-10.

Chairman LeBlanc stated that they had a request to table and they would take a roll call vote. In a 4-2 vote, the motion to table passed and the petition was tabled until next month. Mr. Parrot and Mr. MacCallum voted against tabling the petition.

11) Petition of **Gary W. and Nancy T. Seesman, owners**, for property located at **93-95 Union Street** wherein a Variance from Article IV, Section 10-402(B) was requested to allow a 24' x 32' two story garage with: a) a 6' rear yard, b) a 6' left side yard; and, c) a 10.7' right side yard where 11.6' is the minimum required in each instance. Said property is shown on Assessor Plan 145 as Lot 67 and lies within the Apartment district. Case # 9-11

**SPEAKING TO THE PETITION**

**Nancy Seesman, owner of the property, stepped forward to speak in favor of her petition. She stated that on the property now is a garage that was built in the 1920s, and is in very poor repair and is an eyesore in the neighborhood and needs to be torn down. She stated that garage on the**

**left side and on the back is less than 2' from the boundary line. She stated that the new structure that they propose to build would be 6' from the line on the left and the back, and 10.7' on the right. She stated that there is the proposed structure, although it does not meet the requirements, would be less non-conforming than what is there now.**

She stated that the new building that they are proposing would allow for parking of two vehicles in the garage and there would be storage area to store some personal items (a motorcycle, a desk, and a gas grill). She stated that they also need space to store some items needed for maintaining the property (lawnmower, snow-blower, ladders, etc.). She stated that the upstairs area would provide a good garage storage area for car items, some of which are currently in the basement. She stated that the basement is not a good storage area because it is damp. She stated that the new building would be much more secure storage than what they have.

Mr. Gary Seesman stepped forward to speak in favor of the petition. He stated that he would be the general contractor who will coordinate the effort to build the new proposed garage. He stated that he wanted to add to what Nancy had already presented. He stated that he wanted to point out the conventional benefits and the differences between the existing garage and the proposed garage. He stated that as Nancy had stated, the existing garage sits within 16" from the property lines on two adjacent sides. He stated that the width of the existing garage is 25' and the length is 26' and the height is 20'. He stated that the proposed garage would be moved in from the property lines. He stated that the width calls for 24', the length calls for 32' and the height calls for 23' to the ridge. He stated that after calculating the differences between the two buildings, the new proposed garage will measure 1' less in width, and 6' would be added to the length and 3' added to the height. He stated that the only significant difference between the new building and the existing building is the 6' difference in length, and the 3' bump up in height. He stated that these differences, if approved, would create an efficient layout of both first and second floors, and allow for them to gain storage and to have a central hub to use for maintenance purposes, and would also allow for a workbench.

He stated that he and Nancy are finding themselves in the position of more responsibility, not only for 93-95 Union Street, but also to help maintain their parents' homes as well. He stated that for years he has had to shuffle around things like lawnmowers, bicycles, wheelbarrows, and snow-blowers, just to get at ladders. He stated that given their responsibilities, both he and Nancy need an efficient system that would allow for them to be able to move freely without frustration. He stated that they had accepted more work and responsibility in their lives, and that with that added responsibility, they need to be able to put things in their proper place and have them centrally located.

Chairman LeBlanc asked what was the hardship in siting the garage where it is proposed. He asked why it could not be smaller and brought forward, away from the rear property line. Mr. Seesman stated that he thought that it could be, if that was what was needed, and if that was the only thing that they could do. He stated that the 32' was conducive to having a workbench.

Chairman LeBlanc made reference to Mrs. Seesman's mentioning of parking in front of the garage, and asked if they had a two-car garage, why they would need parking in front of it. Mr. Seesman stated that they have a tenant upstairs, and that it would be to provide off-street parking for them. He stated that as it stands right now, they do have ample parking and with the new garage, he did not see that they would lose any parking whatsoever.

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

**DECISION OF THE BOARD**

Mr. Parrot made a motion to deny the request. Mr. MacCallum seconded the motion. Mr. Parrot stated that, fundamentally, he was looking for something that would make this property unique in the neighborhood and cannot find it. He stated that it is distinctly one of the larger lots on the whole block. He felt that a 32' garage was about the widest among he has ever seen. He stated 24' x 24' is common, and that if cars were 6' wide, and the doors are 8' x 7', as shown on the plans, it would leave an extremely large workshop but that given the constraints of the lot, he felt that it was perfectly feasible to comply with the set-backs and still get a very decent sized garage.

Mr. MacCallum stated that he largely agreed with everything Mr. Parrot just said, except that he thought Mr. Parrot made a mistake on one of the facts. He stated that he thought the proposed garage would be deeper, not wider, according to what was presented. He stated that any opinion that Mr. Parrot may have, he would have the opportunity to express it. He stated that in this case, he did not see anything particularly unique about this property which would justify different treatment from any other properties within this Zoning district. He stated that in addition, the neighborhood, from looking at it, is fairly crowded. He stated that the lots are not abundantly large and buildings that are fairly big in relation to the size of the lots, so what one has a tendency toward over-intensification of the property. He stated that for those reasons, and also the one that Mr. Parrot mentioned, that it is feasible to reconfigure the garage so that it would comply with the Zoning Ordinance, he would be supporting the motion to deny.

Mr. Parrot stated that he wanted to clarify his analysis. He stated that when he previously stated that the proposed garage is "wider," he referred to the fact that the side of the garage that is parallel to the street is 32', and that is what he meant by width (the side parallel to the street). He stated that the existing garage is 25.67' (what he calls) wide, and that he calls the front to back (perpendicular to the street) the depth, which for the existing garage is 24.67' and the proposed is 24'. He stated that this was the reason he used the term "wider" with respect to the increased size.

Chairman Leblanc stated that one thing that he felt the Board should also consider is whether or not this would be the minimum that is being asked to grant what they are looking for, and that what the applicant was requesting did appear to be over the minimum to accomplish their ends. Mr. Horrigan asked what the minimum would be. Chairman Leblanc stated that the Board wants to grant as little as possible, and that he did not think it met that test.

Hearing no other comments from the Board, Chairman Leblanc called for the vote to deny. The petition was denied, with Mr. Marchewka voting against the motion to deny.

**III. ADJOURNMENT**

The motion was made, seconded and carried to adjourn the meeting at 8:30 p.m.

Respectfully submitted,  
Lori J. Becker, Acting Secretary

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

Mary E. Koepenick, Secretary

