

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

7:00 P.M.

May 17, 2005

MEMBERS PRESENT: Chairman Charles LeBlanc, Nate Holloway, Bob Marchewka, Arthur Parrott, David Witham, Alternates Steven Berg and Duncan MacCallum

MEMBERS EXCUSED: Alain Jousse

ALSO PRESENT: Lucy Tillman

Chairman Charles LeBlanc called the regular meeting of the Portsmouth Board of Adjustment to order at 7:00 PM.

I. OLD BUSINESS

A) Request for Rehearing by Scott Young of the petition of **Angela M. Zira, owner**, for property located at **46-48 Woodbury Avenue** wherein a Variance from Article II, Section 10-206(4) was granted to allow an existing single family dwelling to be converted into a two family dwelling on a lot: a) having 2,883 sf of lot area where 6,000 sf of lot area is the minimum required; and b) 28.3% open space where 30% is the minimum required. Said property is shown on Assessor Plan 163 as Lot 13 and lies within the General Residence A district.

Mr. Marchewka stated that both arguments were heard and he didn't think that the Board erred in their decision. He further stated the grounds for a rehearing and he didn't believe the applicant had met the criteria.

Mr. Berg noted that he was not present at the initial hearing but that he had read all of the material provided and finding no objections from the Board, he wished to vote.

Chairman LeBlanc called for a vote on the denial of the motion for rehearing.

The motion to deny the Rehearing was passed by a vote of 5 to 1, with Mr. MacCallum voting against the motion.

11) Petition of **Wal-Mart Real Estate Business Trust, David N. Glass Trustee, owner**, for property located at **2460 Lafayette Road** and **Jokers Realty One LLC et al, owner** for property located at **2460A Lafayette Road** wherein a Variance from Article IX, Section 10-908 Table 14 is requested to allow 365.95 sf of attached signage where 300 sf is the maximum allowed. Said property is shown on Assessor Plan 285 as Lots 16-1 and 16-2 (to be combined) and lies within the General Business district.

Mr. Berg stepped down for this petition.

Attorney Pelech spoke on behalf of the petition and the applicant, Wal-Mart Real Estate Business Trust. He indicated that it was their third appearance before the Board in the last 8 months regarding signage. He further stated that they had incorporated the suggestions of the Board to reduce the signage. They eliminated one of the variances that had been previously requested. He stated that they were here for a

variance from Article IX, Section 10-908 to allow 365.95 sq. feet of attached signage with 300 being the maximum allowed. He noted the variance granted back in 1993 to allow 358.87 sq. feet of attached signage is currently attached to the property. They propose an increase of 7.08 sq. feet of signage over what is existing. He thought it was a reasonable request and the Board should consider that Joker's signage is being removed, which is more than 200 sq. feet of attached and free standing signage removed. Overall there would be a reduction of over 200 sq. feet from the site and they felt the criteria for an area variance had been met. They believe it is a dimensional variance and therefore, the *Boccia* analysis would apply. He stated the variance would not be contrary to public interest, special conditions do exist, the benefit sought by the applicant can not be achieved by some other method reasonably feasible for the applicant to pursue, the variance is consistent with the spirit of the ordinance, substantial justice would be done by granting the variance and the value of surrounding properties would not be diminished. Essentially, he stated that they are only requesting seven additional feet of signage.

Chairman LeBlanc asked if there were any questions from the Board.

Attorney Pelech added that as a condition of site plan review, the installation of a back entrance was requested as well as add a free standing sign. He explained that they have completed the requests and still do not exceed the aggregate amount that is required. He pointed out that there will be a new monument sign at the rear entrance of Wal-Mart that was requested by TAC.

Chairman LeBlanc asked what was the amount of the current signage on the site.

Attorney Pelech answered 358.87 approved by a variance on June 15, 1993 and they are asking for 365.95 which is an increase of 7.08 sq. feet.

Chairman LeBlanc stated if the Board was to deny the current request, that would still give them the right to use the 358.

Attorney Pelech answered no, because the façade is being reconfigured they would need to get a variance according to the Planning Department.

Chairman LeBlanc asked if there was anyone else who wished to speak on behalf of the petition.

Chairman LeBlanc asked if there was anyone who wished to speak against the petition.

Chairman LeBlanc asked if there was anyone who wished to speak to, for or against the petition.

Seeing no one rise, he declared the public hearing closed.

Chairman LeBlanc reiterated the request before the Board and asked the Board what their pleasure was.

Mr. Parrott made a motion to deny the petition as presented and Mr. MacCallum seconded.

Mr. Parrott reiterated that one of the tests is that a hardship be demonstrated and if perhaps Wal-Mart was unknown, that could be a factor, however, they are a well-known company and he didn't think that people needed to drawn attention to the fact that it is what a Wal-Mart in fact is and if you could see one sign, you should understand what is available at that store, not to mention, for one, that location has been that for sometime. He further stated with respect to the particular ordinance, the ordinance takes into account a single user large store, such as the current applicant, on the lot and the need for additional sq. footage to the effect that the attached signage that would otherwise be allowed was increased from 200 to 300 sq. feet and the maximum allowed signage was increased from 200 to 500 sq. feet. He felt that was sufficient

and adequate. He thought larger signs were much more unattractive than smaller signs. He thought the petition was lacking in hardship and that the ordinance works.

Mr. MacCallum stated that he agreed with Mr. Parrott's statements. He stated that according to Attorney Pelech's presentation, the signage was already approved in 1993 for 358.7 feet and he thought if they denied the application the applicant would still be able to use the approved 358.7 feet for signage.

Ms. Tillman stated that her understanding was that the existing signage on the building would be removed and replaced with the new renovations.

Attorney Pelech answered that was correct.

Ms. Tillman stated that the Board approves as presented and advertised so the signage as presented at the previous meeting would no longer be in the same location and changed.

Chairman LeBlanc stated the variance they had would go away since they're changing the whole façade.

Mr. MacCallum adopted Mr. Parrott's remarks.

Chairman LeBlanc asked if there was any further comment of the Board.

Mr. Marchewka stated that he is generally not in favor of granting relief for signage. He thought the way the building was being constructed is much different and looks like several different units and he could see where more signage makes a little more sense in the current petition. He would vote for the applicant.

Mr. Witham stated the Board's approach on denials didn't seem to be working so he was considering the approach of an approval. There are four lines of signage being presented and he stated he was comfortable with the proposal if they eliminated the signs that are on the third row because he found them to be advertisement and not directional, while the others were directional and a benefit to the users of the property. This would reduce the signage to roughly 330 s.f., or half way between what is allowed and what they are asking for.

Hearing no further questions from the Board, Chairman LeBlanc called for the vote on the motion to deny.

The motion to deny was a tie vote, 3 to 3 and did not pass. Messrs. Holloway, Marchewka and LeBlanc voted against the motion.

Mr. Parrott moved to approve the petition with the stipulation to remove the third line of signs for the square footage estimated by Mr. Witham.

Chairman LeBlanc asked Ms. Tillman if they could live with that amendment.

Ms. Tillman answered yes.

Chairman LeBlanc asked if there was a second.

Mr. Marchewka seconded.

Mr. Parrott agreed with the reasoning of Mr. Witham with respect to the nature of the signs and added he still felt 300 s.f. was sufficient. Based on the fact that it would bring them closer to the requirement of the ordinance, he would support it.

Chairman LeBlanc asked Mr. Marchewka to speak to his second.

Mr. Marchewka agreed with Mr. Parrott.

Chairman LeBlanc called for a vote on the motion to approve with the elimination of the signage, "bakery, deli, meat, etc." on the third row as depicted on the last page of the submittal.

The motion to approve with the stipulation was passed unanimously.

12) Petition of **Six Hundred Six Realty Trust, C J Annis and D I Rolde Trustees, owners**, for property located at **606 Greenland Road** wherein a Variance from Article II, Section 10-206(22) is requested to allow 5 horses to be kept on the property and in a barn that is 18' from the left property line where relief is needed to keep horses and a 100' set back is required for any shelter for such horses and storage of manure or other noxious substances. Said property is shown on Assessor Plan 258 as Lot 3-1 and lies within the Single Residence B district.

Mr. Berg stepped down for this petition.

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernard Pelech spoke on behalf of the petition. He hoped that the Board had an opportunity to view the property in question and passed out two sets of photographs of the same for those who had not. They showed the barn in question, the residence, the home office, the recreation room and loft barn that exists now. He stated that they were seeking a variance because the applicant with deference to the neighborhood purposely located the barn 18 feet from the left side of the property in order to keep it far away from surrounding residences and in doing so, they created a need for a variance but the granting of said variance would do the neighborhood some good. Otherwise, he stated, they would need a special exception which would locate the barn 85 feet closer to other residences. He indicated that the current location of the barn is over 300 feet from the nearest residence and over 500 feet from the other residences. He went over the ordinance and presented Patricia Cates' report and noted her favorable recommendation. The property is the largest residential parcel in the area consisting of 3.78 acres. In addition, he further stated the properties to the left and rear would not be developed and the property is uniquely shaped. He thought the applicant met the criteria necessary for the Board to grant the requested variance.

Attorney Pelech indicated he thought that the case of *Boccia* should be applied. He also noted the case of *Rancourt* and pointed out the similarity between the facts in that case and the current petition. In *Rancourt*, the Supreme Court found the Zoning Board of Adjustment and the Superior Court were correct in finding that the Gately property met the hardship standard of *Simplex* because of its unique setting. The unique setting was because the lot was larger than most of the residential surrounding lots and it was uniquely configured because the rear portion of the lot was considerably larger than the front and the lot was located in a country setting. The Manchester ZBA and the trial court both found that the zoning ordinance precluded horses in the district which interfered with the intervenor's reasonable proposed use of their property considering its unique setting. He stated that keeping horses on the applicant's property was a reasonable use and a use that is allowed under the special exception of the ordinance. He reiterated the similar characteristics of the applicant's property and the Gately's.

Attorney Pelech cited the first prong of the *Boccia* standard and indicated that the variance was necessary and the property did have special conditions. He then went over the rest of the criteria set forth in *Boccia*

and explained how his clients satisfied each standard. He indicated that if the variance was denied, the hardship upon the owner would be substantial and it would outweigh any benefit to the public. He pointed out that the applicants would adhere to manual of best management practices for agriculture in New Hampshire. He also noted that the manure storage would be on a movable trailer and the manure would be removed from the property on a weekly basis taken to either North Hampton or Stratham. The manure stored on the site would be covered to prevent flies or contamination and kept inside the barn. The pasture areas would have a weekly pickup of the manure. The applicants would use a fly predator program as well as mosquito magnets on site. The barn would have ultra violet penetrating glass windows to allow ultra violet light to enter the barn area and a product called "stable fresh" would be applied to the stall areas when they are stripped on a weekly basis to eliminate and neutralize odors. Attorney Pelech also noted that the applicants would only use the property for the stabling of their own animals and no riding classes, shows or competitions would be held on the site. A fence would be erected along Oxford Avenue to prevent a horse from being able to get onto any of the surrounding Oxford Avenue properties as well as another fence be erected at the end of the driveway to mitigate any horse from getting onto Greenland Road.

Ms. Danielle Annis took a moment to address the concerns regarding her application in hopes to shed a more accurate representation of what was to be expected then what was presented by the opposition.

Mr. Parrott asked where the wetlands were on the map provided.

Attorney Pelech answered the very rear of the property.

Mr. Parrott asked if a substantial portion of the Annis' property was wetlands.

Attorney Pelech answered a very small corner is.

Mr. Parrott noted that the people of 580 or 566 Greenland Road had not voiced their opinion on the proposed.

Attorney Pelech noted it was the property to the left of the site.

Mr. Parrott asked where the shared driveway was.

Attorney Pelech answered that the shared driveway easement is between the two existing dwelling unit on Lot 1 and the proposed dwelling unit on the newly created Lot 1A.

Chairman LeBlanc asked if there was anyone else who wished to speak for the petition.

Steven Berg of 10 Ashland St. spoke on behalf of the petition. He noted that he is a state certified real estate appraiser, a designated member of the appraisal institute, a member of the NH Board of real estate appraisers and a member of the ZBA. He stated that he has appraised homes in the greater Portsmouth area since 1987 and wanted to speak to the neighbors' concerns that the proposed would diminish the values of their homes. He recalled at least 9 homes that he had appraised that had views of horses and he had never seen the value of a property abutting horses suffer due to the proximity. He recalled at least two home owners who bragged to him about which of their rooms had views of the horses and another told him how much her daughter enjoyed going over and petting the horses. He stated that he had never heard of anyone referring to horses nearby as being adverse.

Continuing, Mr. Berg stated he thought the neighboring homes would benefit from the Annis' horses therefore, they would not be adverse. He informed the Board about other similar properties in the surrounding area that have abutted horse farms as well as the interviews he conducted with other real estate agents which he had asked if the horse farm was at any way adverse. They responded that they were a "plus". They also said that no one complained of or had any concerns about odors or insects. He

reiterated that the horses had no impact on those homes. He thought it exerted some positive influence on the neighbors' properties' value since it increased the value of the Annis' home. He thought the real benefit came from the view. He read aloud to the Board multiple listings of homes for sale and the descriptions, which incorporated "views of the fields, riding rings and horse farm". He indicated that the abutters' concerns about odor and insects were valid to raise, however, the buyers and sellers of homes near horses did not seem to indicate there ever being a problem. He raised the question of why the owners of a home assessed at a million dollars would want their property to smell bad. He also pointed out that the Annis' farm is attached to their house. The second floor of the barn is the husband's home office and since the home is only partially air conditioned, the windows in the house are kept open. He addressed the neighbors' concerns about the manure and it affecting their health by posing the question of why would the mother allow her two young children to be exposed to "this threat" posed by the neighbors. He felt the abutters' fears were unsubstantiated. He finally addressed the neighborhood and its setting. He stated it is not a tranquil residential subdivision. It is impacted by low flying planes, fumes from 14,000 vehicles that pass by everyday, odors from the nearby fish factory and insects from nearby marshes. Despite that, he was quite comfortable stating that the Annis' request would benefit the value of the surrounding properties. He urged the Board to grant the Annis' request and reiterated that it would not adversely affect the value of the surrounding properties.

Chairman LeBlanc asked if there was anyone else who wished to speak in favor of the petition.

Mike LeSabre, a practicing veterinarian in Rye and Kittery, was there to answer any questions concerning health issues. He stated that he lives on a horse farm consisting of 13 horses and wanted to address the manure issue raised by the abutters. He visited the Annis' property and the facilities and found them to be quite adequate in both the buildings that house the horses and the ability to handle the manure and feed storage. He pointed out that horse manure is much different than manure produced by other animals, specifically cows, chickens, etc. He stated it was much more dry and cake-like and does not hold nearly as much nitrates (which produces the smell or odor) that some other farm animals produce. He stated a big pile of stored manure outside is quite dry and the odors are quite minimal.

Chairman LeBlanc asked if there were any questions from the Board.

He asked the general public if there was anyone else who wished to speak for the petition to form a line from behind the podium to speed up the process.

Mary Gately of the case of *Rancourt* reiterated that her variance was granted in 2001 and stated that to date, they have not had one complaint, been visited by the police, the health department, the building department, the planning department and none of the neighbors that had any concerns have approached them with any complaints since their horses have come to the property. She stated that shortly after their horses moved in, the City of Manchester did a revaluation and every house on their dead-end street increased substantially. She indicated that one of the abutters to the rear of her property sold his house about a year after the horses came and sold it for a considerable increase and she asked the people that moved in what made them buy the house and they informed her that they thought it would be a tranquil place to live.

Chairman LeBlanc asked if there was anyone else who wished to speak for the petition.

Pam Hodgdon? Spoke in favor of the Annis' petition and indicated that she has a degree in animal science from the University of New Hampshire and has been a riding instructor for over thirty years and ran a farm in Madbury for over fifteen years. She was asked by the Annis' to come to their property and evaluate their facilities. She indicated that the facilities were not only suitable but exemplary.

Gail Holbrook and her sister Gwen Charlotte? Who live next door to each other both have small farms and stated that they have a ton of neighbors in close proximity to their properties and that they thoroughly

enjoy their farms. She stated that there are many different new ways to remove manure and that they have never had a complaint from any of their neighbors about the manure.

Chairman LeBlanc asked if there was anyone who wished to speak in opposition.

SPEAKING IN OPPOSITION TO THE PETITION

Sherry Zannit of 580 Greenland Road stated that the first application that was filed in this matter was back in 1997. She quoted from the letter of decision issued. Essentially it stated that the facilities were inadequate and the two horses proposed would cause a diminution in value of the surrounding properties as well as affect the quality of life of the residents in the area. She asked the Board what had changed since that original denial letter. She stated they built a 2,000 sq. ft. barn and that was it. She stated that the objections were due to the animals. She presented a folder she brought with her full of information that confirmed when horses are brought onto a property there will be flies, manure, odor and mice. She thought the way that the Annis' handled the whole procedure was not proper. She also indicated that the ordinance states there can be no diminution in value to the surrounding properties and reiterated that it was decided in 1997 that there would be. She also spoke for her husband who was away on business, that was against the Annis' request as well as Brad and Sherry Lumis.

A neighbor on Oxford Avenue stated her property abuts that of the Annis'. She was there to voice her opposition to the petition. She pointed out that she had a master's degree in animal sciences and consulted a number of professionals for the matter at hand. She stated that they are concerned about the nuisance that the proposed would create in her neighborhood greatly reducing their enjoyment of their property. She stated that it was particularly related to the odor that would emanate from the Annis' home onto their property. The odor would come from both the manure and hay. She stated that they did not buy their home to live near a farm and smell the smell. She pointed out a comparison made earlier between the Hett farm and the petitioners' and stated that it was an inaccurate comparison. She felt that if there were horses brought into the residential area it would increase the amount of mosquitoes, horse flies and regular flies into their neighborhood as well as diminish the value of their home and others as well. She urged the Board to deny the request for a variance.

A Board member asked the homeowner if 60 feet would be enough area between the closest home and the pasture area.

She stated in her opinion, no. She stated that based on the information she received, it is the norm to have larger parcels to house the amount of horses the Annis' were requesting.

Jim Brecher of 111 Oxford Ave spoke against the petition. He stated that his back yard abuts the front yard of the petitioners. He stated that he thought most of the people's concerns was the odor. He painted a picture of driving through a country road, sniffing the air and smelling the manure in the air. He also asked the Board to pretend they owned his house. They opened the window and smell the air coming through the house and all that is present is manure. He didn't think that the health officer or animal officer had properly addressed the health concerns raised. He thought the manure could seep through the ground and get into the water. He asked the applicants if they were prepared to accept the responsibility of health issues, which could come about due to people in the immediate area having compromised immune systems. He asked if the property was large enough for the horses to be rode and if not, where they would ride the five horses. He also asked what would happen if the horses were bread, he asked what they would do then. He stated that it is a city setting and he chose to live in a city setting not a country setting back in 1976. He stated to the applicants that if they want to live in a country setting move to the country where their horses would be welcome.

John Roberge of 65 Oxford Ave. spoke in opposition to the petition. He stated that he has known the applicants since 1997 and that they have always been great neighbors. He said he was before the Board in 1997. He said he did not hate horses and he was concerned about the farm becoming an attractive

nuisance. He thought the Annis' would do everything in their power to tend to their horses and farm but he was afraid about his grandchildren getting hurt since the pasture would only be about 60 feet from his home. They come over to his house to play and swim and he thought that they would go up to the fence and get hurt. He also noted that a few of his grandchildren have asthma and with all of the concerns voiced by the neighbors he thought that it would agitate their condition. He just wanted to be able to enjoy his property and he didn't feel like he could if the horses came to the area.

Alan Baker of 75 Oxford Ave. spoke in opposition to the petition. He stated that he was a commercial fisherman and noted a comment made earlier in the presentation about prevailing winds. He stated that he pays a lot of attention to the winds. He went to a website and checked the prevailing winds for the past eight days and in those eight days, the only day that the wind didn't blow from the Annis' property onto his was the sixteenth. He felt for a good part of the summer they would have to deal with the smell issue due to the prevailing winds. He thought that no matter how hard the Annis' would try, once it rains and the humidity starts, the odor would get worse once it seeps into the ground. He urged the Board not to grant the variance.

Jole Charache of 566 Greenland Road spoke in opposition to the petition. She stated that she moved in back in 1991. She stated that on her property there is a large wetland area and she thought that the wetlands would be negatively impacted by the horses' manure. She stated that the property deserved a better look and was worried about the mosquito population increasing due to the longer grass in the pastures and the horses that would be grazing in those pastures.

Chairman LeBlanc asked how long Ms. Charache had been living at her property.

Ms. Charache answered since 1992.

Mr. Parrott asked her to explain if she was walking down the property line between hers and the barn where she would run into the wetlands.

Ms. Charache answered that it is uphill from the wetland area.

Mr. Parrott asked Ms. Charache straight back from her house, how close was she to the barn before she encountered a wetland.

Ms. Charache answered that the barn is on a high area and the back of the barn is the wetland area which sits on her property line towards Rte 33 and down the other side of the slope is a wetland area as well. There are wetlands on both sides.

Chairman LeBlanc asked if there was anyone who wished to speak to, for or against the petition.

Attorney Pelech stated that he did not represent Mr. Durgin in the 1997 application and pointed out that nobody appeared to the meeting to present the application. Mr. Durgin was the owner and the applicants were the Annis'. The Annis' did not appear to the meeting but submitted a letter to the Board. The only people that appeared at the meeting were three abutters who spoke in opposition and as a result, a letter of denial was issued. He further stated that in 1997, the house had not been built, the barn had not been built, and there was a proposed idea of a barn to be constructed on the middle of the property much closer to Oxford Avenue than where it is now. He also stated that his clients have no intention of riding the horses off-site. He reiterated that the manure would be stored on a wagon and would not be left on the ground. He noted a letter submitted by one of the abutters in opposition that made the claim that mosquitoes breed in manure piles and he stated that was absolutely false and in fact, he stated, that statement contradicts itself because the information that was provided to the Board from the abutters made reference to figure 1.2 which showed how mosquitoes breed and that is in water.

Mr. Parrott asked Attorney Pelech what the distance was between the corner of the barn and the boundary line that slices Hawthorne Ave.

Attorney Pelech stated that the lots in question are 90 feet wide and so, probably about 100 feet. He further stated that Board could put any stipulations on the granting of the variance to ensure that there are no problems. He reiterated what steps the Annis' would take to ensure proper care and maintenance was performed and stated if there was a concern about the environment they could relocate the pasture areas. Attorney Pelech went on to say that there is always the risk with any variance that is granted that a subsequent owner could violate the terms of the variance and there is nothing that the Board could do to prevent something like that from occurring in the future. He thought that the Board could take whatever steps necessary to try to put as many conditions on the variance and hope that any future owners would abide by them and have the same good intentions as the Annis' have. He provided an example of deed restrictions. He stated that the current owners would abide by the conditions set and noted case laws that stated Board members could not base their decisions on what might happen in the future with a future property owner. He addressed the comment made earlier about the horses reproducing and stated that the Annis' have no intention to have more than three horses and asked for five so if in the future they have more children they would be able to have two more horses as well.

Mr. Parrott asked Ms. Tillman if the zoning ordinance, as phrased, permits having horses on the property in question.

Ms. Tillman answered no, that horses would be allowed provided that certain conditions are met by a special exception. However, she stated, one of those criteria are not met because the barn structure is not 100 feet from the abutting property. If the barn were in the middle of the lot and everything was 100 feet from the abutters then it would be a special exception.

Mr. Parrott reiterated that the applicants weren't asking for a variance for the keeping of horses, they can already do that if only they move the barn to a different place.

Chairman LeBlanc and Ms. Tillman answered no.

Chairman LeBlanc stated the problem was the locus of the horses is 18 feet from the property line and one of the conditions that would allow them to come in for a special exception is that the locus has to be a hundred feet from all property lines. Since they do not meet the hundred feet, they are before the Board for a variance.

Mr. Parrott asked about the horses and suggested if the applicants fenced in an area in the middle of the property such as every portion of the fence is at least 100 feet from the property lines would they be allowed to do that without seeking a variance.

Chairman LeBlanc answered no because the variance requires that the Board get a letter from the Animal Control Officer stating that the conditions for keeping those animals are proper and just and keeping those animals outside all the time, especially in the winter, is probably not a good way to treat the animals.

Chairman LeBlanc asked if there was anyone else who wished to speak to, for or against the petition.

Seeing no one rise, the Chairman declared the public hearing closed.

DECISION OF THE BOARD

Chairman LeBlanc read aloud the ordinance that applied to the current request and asked the Board for a motion.

Mr. Marchewka moved that the application be denied and Mr. Holloway seconded.

Mr. Marchewka stated that both arguments were good and the abutters had spoken loud and clear. He thought that the Annis' property was like an island surrounded by abutters that didn't want horses there. He felt it changed the character of the neighborhood considerably and thought the impact on the abutters was considerable. He stated that given where they plan to house the horses it was contrary to public interest and the zoning ordinance states there needs to be 100 feet from the property line and that is not the case. He went over the rest of the criteria for granting a variance from the ordinance and reiterated that he didn't feel the criteria was met.

Mr. Holloway stated the same reasons as Mr. Marchewka.

Chairman LeBlanc asked if there was any further comment by the Board.

Mr. Witham stated that he would not support the motion. He did not think odor or the bugs or insects would be an issue but he was not comfortable with the proximity to the wetlands and the manure would be too close to a neighbor's yard. He did not think it was a country setting.

Mr. MacCallum stated there would not be any problem with the smell and organic waste or that the property values would diminish from personal experience. The one fact that he could not ignore was the neighbors' comments about the scenario of the Annis' selling their property and the new owners not adhering to the same management techniques. He wanted to be able to grant the variance but he could not disregard the feelings of the neighbors.

Chairman LeBlanc stated that the fact of it being a pre-existing neighborhood and bringing in the horses would change the character of that neighborhood. He stated the reason for the ordinance is to protect the property of people who live in a particular area. He would support the motion to deny.

The motion to deny the requested variance was approved via a unanimous vote of the Board, 6-0.

7) Petition of **Mark C. Adamy and Holly Lowe, owners**, for property located at **350 Broad Street** wherein a Variance from Article IV, Section 10-402(B) is requested to allow a 14' x 26' detached garage with a 6'± left side yard where 10' is the minimum required. Said property is shown on Assessor Plan 221 as Lot 69 and lies within the General Residence A district.

SPEAKING IN FAVOR OF THE PETITION

Holly Lowe, owner of the property in question spoke on behalf of the petition. She stated that they wanted to build a 14 x 26, fifteen foot high detached garage. The garage would be built to match the existing house, same roof pitch style, same roof material and same color. She was before the Board to obtain a variance for setbacks. They seek relief from the side yard setback of 10 feet to 6 feet. She went over the materials submitted to the Board. She stated since the last time they presented to the Board there were three changes. The length of the garage was reduced by 4 feet from 30 feet long to 26 feet long which represented over a thirteen percent reduction in the footprint of the garage. The height of the garage was reduced two feet from 17 feet to 15 feet high. They had previously requested a setback variance from the rear property line which was being eliminated from their request. She indicated that all of her neighbors have detached garages ranging from two car to four car garages. She pointed out their odd shaped rear property line which directly impacts the proposed location of the garage. She stated that the only reasonable location of the garage would be to place it in the rear left corner of the property due to the location of the existing driveway. She remarked that her neighbors of 366 Broad and 72 South Street sit up high on the hill and look down onto her property so the height of the garage would not be an issue for them.

Ms. Lowe stated that the roof line combined with the presence of the stone wall and the elevation differences on the nearest property line would not create water runoff into the neighbors yard. She noted that in order for them to enjoy the garage, a setback variance for 4 feet was requested for the side yard. She went over the various points contained in the analysis for a variance. She pointed out that the maps she presented to the Board could not reasonably place the garage anywhere else on the property and by building the garage on the recommended location, they would actually improve the public interest by not paving over additional green space which could create additional runoff. She further added it would benefit the public by removing eye sores from her property by removing the vehicles off the street and into the garage as well as the garbage barrels, toys, bikes, etc. The garage would have a height below all surrounding structures and would be constructed in good taste. She indicated that page 7 of her handout depicted the special conditions of her property (i.e. narrow driveway bordered by a three foot high retaining wall, odd shaped rear property line and protruding bulkhead) which all make it unreasonable to place the garage ten feet from the side yard. She stated pages 9-12 depicted alternative locations for the proposed garage along with the rationale for why they were not reasonable. She noted that her proposed location for the garage would lessen congestion on the streets as they would park their vehicles inside the garage and not on the street and it would improve the quality of their lives by reducing the snow removal chores amongst other additional advantages.

She reiterated that they had adjusted their proposal by reducing the length and the height and eliminated the request for the rear setback and pointed out again that every abutting neighbor has a garage. She indicated that her abutting neighbors enthusiastically support the addition of their garage and specifically, its location. She said that they have signed letters from their neighbors showing their support for the same. She also noted that her neighbors wouldn't support them if they thought that the addition of a detached garage would diminish their property values. She stated that in this day and age, most people need a garage to store their cars, tools, toys, bikes, etc. and without the garage, those types of items are left out in the elements in view of the neighbors and stored in extremely inconvenient locations. Without the side yard variance, she said, the garage would be situated five feet from the front of the bulkhead and make it very difficult to enter which would therefore diminish the value of the investment.

Chairman LeBlanc asked if there was anyone who wished to speak to, for or against the petition.

Seeing no one rise, the Chairman declared the public hearing closed.

DECISION OF THE BOARD

Mr. Marchewka moved that the Board grant the application as presented and advertised. Mr. Parrott seconded.

Mr. Marchewka stated that the applicant made a strong case for the variance and in having to place it closer to the side yard the variance would not be contrary to public interest. He thought the enforcing of the ordinance would result in unnecessary hardship and the shape of the lot depicted the special conditions of the property. He stated the variance should be granted.

Mr. Parrott agreed with all of Mr. Marchewka's comments.

Chairman LeBlanc mentioned that the relief requested seemed to be the minimum that could be sought to produce the affect that the applicant wanted.

Chairman LeBlanc called for the vote and the motion to grant the variance was passed by a vote of 6-1 with Mr. MacCallum voting in the opposition.

5) Petition of **Strider and Rose Sulley, owners**, for property located at **46 McNabb Court** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) are requested to allow the following: a) a 12' x 24' 1 ½ story addition with dormers with a 4' right side yard where 10' is the minimum required; b) a 4' x 12' 1 story rear addition with an 18' rear yard where 20' is the minimum required; c) a 4' x 12' left side porch with an 8' left side yard where 10' is the minimum required; d) a 4' x 12' two story right side addition with a 4' right side yard where 10' is the minimum required; and, e) 32% building coverage where 25% is the maximum allowed. Said property is shown on Assessor Plan 112 as Lot 59 and lies within the General Residence A district.

SPEAKING IN FAVOR OF THE PETITION

Rose Sully, owner of 46 McNabb Court presented for the petition. She was requesting a variance to put on an addition to their house. The addition would provide space for a second floor bedroom, a first floor bathroom, a mud room and a covered porch. It would also allow for an open concept kitchen and dining area as well as enable them to relocate the living room. The addition was necessary because they currently have only two bedrooms and their six year old son and their eight year old daughter share a room and they will very soon need to have their own bedrooms. It would also give them another bathroom and a mudroom. She explained their need for a mudroom since the house currently has a foyer and in the winter, their dining room turns into a storage area for their winter items that need to stay warm and dry. She further stated that their extended family is aging and the house is not conducive to old visitors. She said that the concept of their home is not comfortable for the way that they live. She pointed out the first floor plan and informed the Board that the kitchen currently acts as a highway that connects the rooms' entryways on the first floor. She further stated that not more than one person at a time can be in the kitchen without getting in the other person's way. She indicated that their foundation footprint is very small being only 20x26 and it would be impossible to rearrange the space that they have to gain the uses and the enjoyment that the addition would bring. The house currently sits 8 feet from the right side property line, twelve feet from the left side property line and 24 feet from the rear property line. She noted that as small as the footprint of the house is currently they are already at 23% of lot coverage. She spoke with her neighbors most directly affected and asked for their opinions. They both were in agreement with what they were proposing.

Ms. Sully stated that their lot does have special conditions and their home as it currently exists does not meet the requirements for the minimum area on street frontage and front and side frontages. At 3,046 sq. feet, their current 688 sq. foot coverage equates to 23%. They were requesting an additional 290 square feet than what they already have. Of that additional square footage, 28 sq. feet would be the covered porch which would have minimal impact on their neighbors and 28 sq. feet for a one-story bump-out falling two feet into the rear setback and again, she reiterated it would offer minimal impact. The addition would sit below the ridge line of their house to the rear. The 6 feet of relief they requested for the right side abuts city property which provided a permanent local space between their fence and the neighbors' on the side of the grassy portion of the back porch.

Additionally, she stated that the addition would not impact the light and air of their neighbors. They found it impossible to add-on to the house without requiring a variance due to the area and dimension of the lot and the position of their existing house. She didn't think that there was any other alternative other than an area variance. She thought their request was consistent with the spirit of the ordinance since their single family home would remain a single family home and would not detract from the character of the neighborhood. She thought that substantial justice would be done because the addition would allow them to stay in their neighborhood without adversely affecting their neighbors. She also thought that the addition would maintain the character of the neighborhood. She had no doubt that the addition would not diminish the values of the surrounding properties and in fact, she stated that the addition would increase their value of their home tremendously. She reiterated that in order for her family to remain in the

neighborhood they really need the extra space. She read aloud a petition signed by her neighbors in support of their request for an area variance.

Chairman LeBlanc asked the applicant if McNabb Court goes up to the property in back of hers.

Mrs. Sully answered yes.

Barbara Jennings spoke in favor of the petition being the next door neighbor to the applicant. She read a letter aloud to the Board that she wrote in support of the applicant's request.

Chairman LeBlanc asked if there was anyone in the public who wished to speak to, for or against the petition.

Seeing no one rise, Chairman LeBlanc declared the public hearing closed.

DECISION OF THE COMMISSION

Mr. MacCallum made a motion to deny the variance request.

Chairman LeBlanc asked if there was a second.

Seeing none, Chairman LeBlanc asked if there was another motion.

Mr. Holloway seconded the motion to deny the variance.

Mr. MacCallum stated that the zoning ordinance is supposed to be the rule and the variance is supposed to be the exception and not the other way around. As such, he stated, there is supposed to be something exceptional about the property. He thought the property in question was typical to those in that neighborhood. He further stated that the cumulative effect of all of these variances put together was enough to destroy the character of the neighborhood and of the zoning district. There's supposed to be something different or unique about the property that makes it different or unique from other properties in the neighborhood. He thought that there were a growing family that needs a larger house and didn't think that was enough reason to demonstrate a hardship which would constitute the granting of the variance.

Mr. Holloway agreed with Mr. MacCallum's statements.

The Board voted to 4-3 against the motion to deny the variance, Mr. Marchewka, Mr. Berg and Chairman LeBlanc voting for the motion.

II. PUBLIC HEARINGS

1) 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.

SPEAKING IN FAVOR OF THE PETITION

Ms. Tillman presented the minutes from the August 24th meeting together with the plans that were submitted at the time of the initial application.

Attorney Pelech presented on behalf of the owner and handed out aerial photos to the Board. He stated that the case was remanded back to the ZBA by the Superior Court after the applicant appealed the Zoning Board on August 24th. He stated they were back to go through the process again and that property is occupied by one dwelling as Lot 82 and the parcel in question is Lot 81. He explained the area in question, Lot 80 and 79 are vacant lots of land composed mostly of wetlands and to the rear of the property is I95 and across the street is a large parcel of land 1.36 acres as Lot 55 owned by PSNH. On May 5th, the City Attorney and the Chief Building Inspector visited the site along with him and Barbara Bacon and noted that one of the first things apparent to him was the inability to have a meaningful conversation outside of the building due to the noise from I95. The house was originally located in a different location and it was moved to the property in question as part of the paving and construction of the bridge and I95. Mr. and Mrs. Bacon resided in that home and Mr. Bacon was granted a variance to operate his chiropractic business out of the basement of their home. Over the years, Mr. Bacon's practice grew and he did not seek any permits for the same. In 2003, Mr. Bacon had made an inquiry about purchasing Lot 80 from the City and it was discovered that Mr. Bacon's use had been expanded and that he needed to request a retroactive variance from the Board for the expansion of that use. He stated that he had filed the application in June or July and came before the Board in August of 2004 and at that time, the Board denied the application.

Attorney Pelech stated that after the request for rehearing had been denied and an appeal taken to the Superior Court, the matter was remanded and that is why they were before the Board again. They attempted to provide a plan that would show the proposed parking on the site. If a variance was granted, the parking lot would then have to go before the Planning Board and Site Review because it would be deemed a commercial parking lot. He noted to the Board that the subject property is not set within a residential setting and is basically the last piece of developed land on that side of Edmonds Ave. He reiterated that Lots 70 and 80 were vacant lots with wetlands that would not be developed and across the street was a big swamp with the PSNH easement going straight through it and the rear of the property is I95. Mr. Bacon has lived in the subject property for over 26 years and has never received any complaints from anyone regarding his use of the property, parking vehicles or any traffic or congestion problems. He stated that the only time he had a problem was when he considered purchasing the parcel from the City and disclosed what he had been using the property for resulting in the violation of the zoning ordinance.

Attorney Pelech stated that the property is unique especially due to its surroundings and that it did have special conditions which arises to a hardship. He thought that the zoning restriction as applied to the subject property interfered with the reasonable use of the property considering its unique setting. He felt that what was being requested was reasonable and although it had been expanded without proper permits, the Board needed to consider the prior decision awarded granting the variance sought when Mr. Bacon was before the Board requesting permission to convert the property into a chiropractors office. He further remarked that the Board felt that there were special conditions to grant the relief and allow the property to be used for a chiropractic office. They felt those conditions still exist. He didn't think it was a critical issue whether the office was 300 sq. or 2300 sq. feet, he thought the issue was whether the use was a detriment to the neighborhood or somehow affected the neighborhood negatively and they did not feel that there was. He didn't believe that there was any fair and substantial relationship between the general purpose of the zoning ordinance and the specific restriction on the property only because of its unique location. He reiterated that for over 25 years no one has had a complaint against the office. They didn't believe that the surrounding properties would diminish in value and the variance would not be contrary to public interest. He felt the hardship would be considerable if the variance was not granted because his client's practice would either be shut down, be severely limited in size or he would have to move to another location.

Chairman LeBlanc asked if there were any questions from the Board.

Mr. Witham asked if Attorney Pelech had brought the case to the Superior Court.

Attorney Pelech answered yes.

Mr. Witham stated that one of the arguments made was that the applicant wanted to an opportunity to present a new plan.

Attorney Pelech stated that part of the decision was that the Board did not have sufficient information to make a decision.

Mr. Witham asked if what was submitted was the more detailed plan.

Attorney Pelech answered yes, he said one of the problems was that a few Board members felt the original plan was not to scale.

Mr. Witham stated that the current plan was still wishy washy at best and it didn't seem to bear any requirements for a site plan.

Attorney Pelech stated no, not for a site plan but it meets the requirements for a variance application.

Mr. Parrott asked what the difference was between the current plan submitted and the previous one.

Attorney Pelech stated that the last plan that was submitted was not to scale and there weren't any dimensions for the parking spaces. He stated that the current plan demonstrates that the parking spaces do fit on the property, they are the size required by the ordinance and they are to scale.

Mr. MacCallum asked how many parking spaces were on the site currently.

Attorney Pelech stated to the left of the building there are ten spaces dedicated to the practice and to the right there are three for the residential portion of the building.

Chairman LeBlanc asked what the scale was used on the plan.

Attorney Pelech answered one-inch equals twenty feet.

Chairman LeBlanc asked if there was anyone in the public who wished to speak to, for or against the petition.

Seeing no one rise, the Chairman declared the public hearing closed.

DECISION OF THE BOARD

Mr. Marchewka asked if they were voting on the same thing as they voted on it the last time.

Ms. Tillman answered yes, that the only difference was that a new plan was submitted to the Board.

Mr. Parrott read aloud the City of Portsmouth Board of Adjustment's Rules and Regulations stating the minimum requirements for adequate plans and noted that the plan was inadequate and did not meet those standards.

Chairman LeBlanc stated that the plan was submitted as a scale drawing to portray the proportions.

Chairman LeBlanc asked Ms. Tillman how the plan was received, whether with a cover letter or not.

Ms. Tillman answered no, that it just came with a set of plans.

Mr. MacCallum asked what the wording was in the decision handed down from the Superior Court in terms of their reference to the plan.

Ms. Tillman read from the decision and stated "remanded Board of Adjustment to allow petitioner to supplement the record or submit a new application."

Mr. Holloway made a motion to table the application for submittal of a proper application and Mr. Parrott seconded.

Chairman LeBlanc stated what the Board needs is what is set forth in the Rules and Regulations.

Mr. Marchewka did not think the issue was the plan itself and did not want the applicant to spend another thousand dollars on having a survey done and then they come back and the Board deny them based on reasons that have nothing to do with what the plan would show them. He didn't know what the Board could do to prevent that.

Mr. Witham made a motion to deny as presented and advertised and Mr. Parrott seconded.

Mr. Witham stated that one of his major concerns had to do with the first analysis, that the variance would not be contrary to public interest. He stated that Edmonds Avenue is used as a cut through for Woodbury and Maple and his concern was that 12 of the 15 parking spaces backout onto Edmonds Avenue and he thought that would create a potential dangerous situation. He felt it was a unique setting and stated that it is still situated in a residential zone. He didn't feel substantial justice would be done by granting the variance and that the value of the surrounding properties could be diminished.

Mr. Parrott agreed with Mr. Witham's statements and added that even though the property is situated in an odd location it is still situated in a 100% residential area. He thought to put a non-residential use in the middle of that street would be contrary to public interest.

Mr. Berg stated he would not support the motion and felt that it was grandfathered. He felt it had been there for a very long time and he thought there was no problem with the residents of the area since no one bothered to show up and speak either for or against the petition. He felt that the parking spaces would not be a problem and have not been for over twenty-somewhat years.

The motion to deny the variance request failed with Mr. MacCallum, Mr. Berg, Mr. Marchewka and Mr. Holloway voting against the denial.

Mr. Berg moved to grant the variance as presented and advertised and Mr. Holloway seconded.

Mr. Berg amended the motion to add that the applicant submit a true engineered site plan before the occupancy permit be issued and Mr. Holloway seconded the amended motion.

The motion to grant the variance passed with the stipulation that a true engineered site plan be submitted prior to the issuance of a certificate of occupancy, with Mr. Parrott, Mr. Witham and Chairman LeBlanc voting in opposition.

2) Petition of **Jason J. Kyrousis and Julie Howard, owners**, for property located at **420 Lafayette Road** wherein the following are requested: 1) a Variance from Article IV, Section 10-401(A)(1)(c) to allow the two dwelling units to be re-arranged in the existing building including proposed additions, and 2) Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) to allow a 14'10" x 17'6" one story addition with: a) a 17'± front yard where 30' is the minimum required, b) 27.5% building coverage where 20% is the maximum allowed; and, c) a bulkhead within the 30' required rear yard. Said property is shown on Assessor Plan 231 as Lot 3 and lies within the Single Residence B district.

SPEAKING IN FAVOR OF THE PETITION

Robert Rodier, the architect on the project spoke on behalf of the owners and the petition. He started with the site plan and noted that the basic concept they were trying to achieve was to create a small two bedroom apartment and to expand the first floor footprint to include a normal first floor arrangement. He noted that the blue on the site plan indicated the existing footprint and the brownish color would be what they would be adding to it. He stated that the house has an existing porch which they plan to enclose and bring the roof line up a story and a half.

Chairman LeBlanc asked if they were doubling the size of the building because it appeared to look like that.

Mr. Rodier answered essentially, yes.

Mr. Rodier went over the second sheet of the handout which was the existing conditions and the third was the proposed. He pointed out that the enclosure of the porch would be to allow for stairs leading up to the second floor. He also noted the size of the footprint of the house decreasing on the second floor. They want to make room for a master bedroom, a laundry room, etc. The remainder of the pictures were photos of the existing conditions from all elevations.

Chairman LeBlanc asked if they would be adding a cellar.

Mr. Rodier stated yes that there would be a full basement added. He stated the way that the grade is on the site they would be allowed to do a small courtyard and the first part of the basement would be used as a playroom.

Mr. Kyrousis, the owner of the property spoke on behalf of the criteria necessary to obtain a variance. He stated that the location of the property is on Lafayette Road and right across the street from the Great Bay school property which is not a single residence and about 300 feet away from the industrial park. He felt that the public interest would be favorably so and the granting of the variance would allow for the enhancement of the property. He didn't think the proposed would infringe on the rights of the abutters and that the strict enforcement of the ordinance would create a new hardship for them. He stated that the existing third floor would not allow for another couple and the zoning ordinance would restrict them from doing so. They were seeking the variance to allow for their elderly parents to move in upstairs. The property lays adjacent to two rows which creates a wedge and the existing dwelling was built in 1908 which pre-exists the ordinance. The location renders any conforming expansion nearly impossible as the thirty foot road setbacks cut right through the house on two sides leaving a third compliant. Their intent

was to build an architecturally sound esthetically pleasing two family dwelling that could accommodate a second set of residents. He stated that the benefit sought by them cannot be achieved by some other method. He stated that the cost of buying a new home that would satisfy or conform to their needs was not feasible. He stated that they have taken all the appropriate steps to mitigate the encroachment upon the setbacks while minimizing lot coverage. He thought that justice would be served if the variance was granted due to them being allowed to care for their aging parents.

Chairman LeBlanc asked if they had the lot surveyed.

Mr. Kyrousis answered yes. He pointed out to the Board that from the tax map, they have lost approximately 2,000 sq. feet. The tax map showed it as 11,500 and the surveyor came up with 9,500.

Mr. Parrott asked what the dimension was from the proposed chimney to the setback line of the neighbors' side as proposed.

Mr. Kyrousis stated 26.

Mr. Parrott stated that they could avoid the encroachment on the left hand side at least area wise.

Mr. Kyrousis stated that they brought Robert Rodier onto the site and he proclaimed that there was only so much that could be done with the style of the existing house.

Chairman LeBlanc asked if the attic and the stairs at the rear of the house would be removed.

Mr. Kyrousis answered yes, the existing steps from the second floor to the attic would remain and the first floor stairs would be removed and the porch would be installed in its place.

Chairman LeBlanc asked about the stairs on the outside of the building.

Mr. Kyrousis stated they were considering removing them but that they are a good fire escape.

Mr. Berg asked about the fence they erected on Lafayette Road if that was where the lot line was.

Mr. Kyrousis stated yes, about a year ago.

Mr. Berg asked where the fence went up if that was all yard that they used to use for recreation.

Mr. Kyrousis answered correct.

Chairman LeBlanc asked if there were any other questions.

A Board member asked what the full lot coverage was now.

Mr. Rodier stated he was not sure exactly but guessed around 13 or 14%.

Chairman LeBlanc asked if there was anyone who wished to speak to, for or against the petition.

Seeing no one rise, the Chairman declared the public hearing closed.

DECISION OF THE BOARD

Mr. MacCallum moved that the variance application be denied and Mr. Parrott seconded.

Mr. MacCallum stated the addition would result in coverage of 24% and the neighborhood does not have that much space between lots. He stated the variance on its own would not be a problem however, he did feel the granting of the requested variance would result in the gradual erosion of the zoning ordinance. He felt that the applicant was more than capable of building an addition within the restrictions of their property and thought their reasons for hardship were lacking in legal feasibility.

Mr. Parrott agreed with Mr. MacCallum's statements and thought that the addition was too ambitious given the size of the lot.

Mr. Berg agreed with Mr. Parrott, he thought it was too large.

Mr. Witham would not be voting in favor of the motion to deny the variance.

The motion to deny the variance passed 5 to 2 , with Mr. Marchewka and Mr. Witham voting in opposition to the motion.

3) Petition of **Franklin and John Grossman Revocable Trust, owner**, and **Nancy and John Grossman, applicants**, for property located at **170 Mechanic Street** wherein the following are requested: 1) a Variance from Article II, Section 10-206 is requested to allow one room and adjacent bath to be used for a Bed and Breakfast within a single family dwelling in a district where such use is not allowed, and 2) a Variance from Article XII, Section 10-1201(A)(2) to allow a travel aisle less than 24' where 24' is the minimum required. Said property is shown on Assessor Plan 102 as Lot 7 and lies within the General Residence B and Historic A districts.

Mr. Berg stepped down for this petition.

SPEAKING IN FAVOR OF THE PETITION

Mr. John Grossman spoke on behalf of the petition. He stated that they wish to construct a bed and breakfast out of a room and adjacent bath that they have in their home. He noted how Portsmouth is a tourist town and would like to take advantage of that. He stated that having just a one room bed and breakfast would not be like the Hilton Garden Inn but he did note that it would keep one more couple in Portsmouth dining at our restaurants, attending events and shopping the stores in downtown. He felt like it would be in the best interest of Portsmouth and theirs as constructing the bed and breakfast would allow them to make improvements to the exterior of their home and to the landscaping as well. He stated that their property is well suited for a small-scale bed and breakfast. He also pointed out that they have a large off-street parking area so they would be able to accommodate those staying with them and that they have special conditions on the property. He did not feel that there would be any impact on the neighborhood. He stated they would not accept guests with pets or children and would only cater to higher-end clientele. He noted that some of neighbors have expressed concern and he felt they were valid and offered two stipulations to be attached to the granting of the variance. The first be that the variance specify that the bed and breakfast only consist of one room and the second, whether permitted or not, that the variance terminate when the property is sold. He felt by adding the two stipulations it would help alleviate the expressed concerns of his neighbors.

Chairman LeBlanc asked if the parking would come off Hunking Street.

Mr. Grossman said that is correct.

Chairman LeBlanc asked if there was anyone who wished to speak to, for or against.

SPEAKING IN OPPOSITION TO THE PETITION

Lorrinda McVay of 42 Hunking Street spoke against the petition. She brought with her a petition signed by residents of Hunking Street and Mechanic Street opposing the bed and breakfast petition of the Grossmans and presented it to the Board.

Hugh Jencks of 25 Hunking Street spoke against the petition. He stated that the property values have risen over the years and indicated that residents have spent a lot of money to improve their properties and keep the values rising. He pointed out that allowing a commercial use on their narrow one lane street would defeat the purpose of the residential zone. He indicated that traffic is hindered at the corners by fire hydrants and utility poles which makes it impossible to turn without entering the oncoming lane of traffic. He stated that there could not be a less accessible or logical site for the city to approve a lodging business than their neighborhood. He felt the introduction of a business use into a residential zone would not do justice but injustice to the residents of the area. He requested that the Board deny the petition.

John McVay of 42 Hunking Street spoke against the petition. He felt that the applicant's request was undermining the integrity of the South End and the resident's peaceful enjoyment of their properties. He stated that him and his wife intentionally bought their property to retire and be able keep their property value from diminishing as it is situated within the Historic District. He pointed out that the increased use involved in a commercial use of property was a serious concern as they did not purchase their property to be next to a commercial business. He reiterated that a hospitality business is not a 9 to 5 operation and that strangers would be coming and going at all hours. He urged the Board to deny the request.

Mr. MacCallum asked Ms. Tillman about the first request of the applicants (the addition at the rear).

Ms. Tillman stated that she did not have the file but it was only a portion of the addition that went before the ZBA.

Geno Marconi of 177 Mechanic Street spoke in opposition to the petition. He stated the reason for zoning laws was to protect the people that live in those sections. He was opposed to the petition because he felt the character of the neighborhood would change significantly. He was concerned that the business could cause adversity within their neighborhood. He said that he thought the Grossmans were nice people and good neighbors but did not agree on this matter. He urged the Board to deny the request.

Ms. Marconi of 177 Mechanic Street spoke in opposition to the petition. She stated that she has lived there for over forty years. She did not like having to speak against her neighbors on this but that she could not support their request. She noted that it would be a disservice to the neighborhood.

Peter Morrin of 49 Pickering Street spoke against the petition. His property abuts the subject property and his concern was with if he chose to sell their property, whether they would be able to attain full value due to the bed and breakfast next door. He stated it was not personal but asked the Board to deny the request.

Chairman LeBlanc asked if there was anyone else that wished to speak to, for or against the petition.

Seeing no one rise, the Chairman declared the public hearing closed.

DECISION OF THE BOARD

Mr. Marchewka made the motion that the request be denied and Mr. MacCallum seconded.

Mr. Marchewka stated that at first the request did not seem like a big deal, however, he noted that the Board has heard from a lot of the neighbors and their concerns and felt that they are the ones to listen to. He felt the variance would be contrary to public interest and he did not think the property was unique since it is a single family home in a single-family district. He didn't think the zoning interfered with any use that the applicant would be able to have on its property. He felt it would interfere with the public and private rights of others as they have heard many objections from the neighborhood. He didn't think that granting the variance would be consistent with the ordinance nor would substantial justice be done. He did not see any hardship being demonstrated.

Mr. MacCallum agreed with Mr. Marchewka's comments and felt that the applicant made a good case but the concern of the neighborhood outweighed his request.

Mr. Witham stated that he would support the motion because he did not feel it was a reasonable use for a residential neighborhood.

Mr. Parrott pointed out that it is a small neighborhood and thought it should remain that way.

Chairman LeBlanc asked if there were any further comment from the Board.

Hearing none, the Chairman called for a vote.

The motion to deny the variance passed by unanimous vote.

Chairman LeBlanc called for a motion to adjourn to the next meeting.

Ms. Tillman pointed out to him that there was still one last petition on the agenda.

It was moved, seconded, and passed to table the final petition to the following meeting.

III. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 11:59 p.m.

Respectfully Submitted,

Christina V. Staples
Acting Secretary