

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

7:00 p.m.

CITY COUNCIL CHAMBERS

July 19, 2005

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

MEMBERS EXCUSED: Bob Marchewka

ALSO PRESENT: David Holden, Lucy Tillman

I. APPROVAL OF MINUTES

A) Excerpt of Meeting June 21, 2005.

Chairman LeBlanc asked that the Board review the Excerpt of Minutes for the Board of Adjustment meeting of June 21, 2005 regarding the property located at 159 McDonough Street.

It was moved, seconded and passed by unanimous voice vote that the Excerpt of Minutes be accepted.

B) Motion for Rehearing on the petition of Myles Bratter for property located at **159 McDonough Street**.

Mr. Steven Berg stepped down for this request.

Chairman LeBlanc read a letter from Mr. James Hewitt, an abutter, requesting a hearing and outlining the reasons for his contentions that the size of the garage in question is less than presented and that the garage did not encroach on his property. In the letter, he stated that "...The ZBA, therefore, rendered its decision based on falsehoods and misrepresentations."

He also read excerpts from e-mail correspondence between Mr. Hewitt and the Assessor's Office where he requested information regarding the size of the garage and where the Assessor replied that the tax card for the structure had been changed in April to 20' x 20'.

Mr. Arthur Parrott moved that the request to rehear the petition be granted, which was seconded by Mr. David Witham.

Mr Parrott stated that his concern is that this is a question, not of judgment or procedure of the Board, but a question of facts upon which the Board may rely and the allegations on which they relied may be incorrect or misleading or are being challenged. He noted that the tax card from the City files shows the building in question at this point in time was 11' x 18', a long way from 20' x 20'. In order to do right by all parties, he felt they needed to review all the facts and conduct a rehearing.

Mr. Witham said he was not present for the original hearing but had read all the notes and other information and found it confusing. It seemed to him the basic question was whether the structure was 11' x 18' or 20' x 20' and it seemed the question was asked a number of times and there was never a straight answer. To him the tax card shows 11' x 18' and he didn't feel it would be off by that much. When he looked at the reasons to grant the variance, one was that this "allowed use and location of the structure had been the same for over sixty years." He stated he had no evidence that it had been in the same location for over sixty years and strongly believed that the original garage was 11' x 18' and what they are building on is 20' x 20'. He also feels there is a difference between having a garage up to your property line and a structure that is being used 24 hours a day. He felt there was misleading information – it's not clean – and he would like to see it cleaned up and come back before the Board.

Mr. Alain Jousse said he would not be supporting the motion. He stated they had acted on the information that was provided and that no new information had been provided that was not available at the time of the original hearing. While he is not disputing the fact that back in 1989 the garage was 11' x 18', it got to be 20' x 20' somehow in the last 15 years. He didn't believe it was the Board's concern whether a permit was issued or not. What was presented to them and approved was to replace the garage that was demolished and keep it within the boundaries of the applicant's property. He goes on the premise that what is being presented to them is truthful.

Chairman LeBlanc stated that he disagreed with Mr. Jousse. The information they were provided seemed, on the face of it to be truthful, but further evidence has come up to show that there may be some doubt as to its veracity and he would like to hear this over so that all the information could be before them and they could make a judgement based on the true facts.

The Board voted 4 to 1 to grant the rehearing, with Mr. Jousse voting against the motion.

II. PUBLIC HEARINGS:

1) Petition of **Wal-Mart Real Estate Business Trust, David N. Glass Trustee (Eric S. Zorn, Managing 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. Steven Berg stepped down for this petition.

Prior to hearing the petition, Mr. David Witham referenced the memorandum issued by the City's Legal Department and asked whether it meant that, if signage is presented a certain way and the Board approves it, then that is the language that has to be put up?

Chairman LeBlanc indicated "no," that they are approving the square footage.

SPEAKING IN FAVOR OF THE PETITION:

Attorney Bernard Pelech identified himself as representing the applicant and stated they had been here earlier this year. He noted the Board had previously granted a variance for 368 s.f. in the 90's, although it was not referenced in the departmental memo. In its previous granting earlier in the year the Board had made the variance conditional upon deletion of seven words. He made the point that they are only asking for 7 feet more than what exists now, but they are removing over 200 feet from the current Jokers, so the net loss of signage is over 190 feet. The building is a long one and set back, which makes the request for 7 additional s.f. of signage reasonable.

Attorney Pelech stated that the signs are what Wal-Mart deems necessary and they are asking the Board to grant what was granted previously – those seven little signs or some 30 odd square feet. Addressing the *Boccia* analysis, he maintained they won't disturb the public interest or diminish properties in the area and the hardship is that the signage is an integral part of Wal-Mart's nationwide proforma or ad package, which is approved in most communities throughout country. There is no benefit to the public in denying so substantial justice would not be done. They are asking the Board to reconsider and grant the requested variance.

Chairman LeBlanc stated that when he was sitting on this, he didn't remember specific words, but rather the amount of signage and he believed Mr. Witham had just mentioned the content to identify which signs to eliminate, not to try to get rid of certain words.

Attorney Pelech stated that he believed Mr. Witham indicated the seven signs on the second line which say "Bakery" to "Optical" and he moved to approve with the deletion of those seven signs.

**SPEAKING IN OPPOSITION TO THE PETITION:
SPEAKING TO, FOR OR AGAINST THE PETITION:**

With no one rising, the public hearing was closed.

DECISION OF THE BOARD:

Mr. Alain Jousse made a motion to deny the petition as presented and advertised, which was seconded by Mr. Arthur Parrott.

In making his motion, Mr. Jousse stated that a hardship hadn't been presented, at least to his satisfaction. The building is quite visible and looks like all Wal-Marts and by that fact alone would not need signage at all. He stated that the request was not consistent with the spirit of the ordinance and that the diminution of property values was not the point.

In seconding, Mr. Arthur Parrott compared huge office towers, with small tenant signs in the lobby, to the amount requested for this well recognized entity and stated that in this case, the ordinance was generous.

There was discussion among Board members regarding options on motions and granting different amounts of signage, with the result that the motion to deny the petition remained on the table.

The Board voted 3 to 2 to deny the petition, with Messrs. Holloway and LeBlanc voting against the motion.

2) Petition of **Anthony J Balakier and Cherie L. Geiger**, owners, for property located at **490 Islington Street** wherein a Variance from Article XII, Section 10-1201(A)(2) is requested to allow a 21' wide travel aisle where a 24' wide travel aisle is required in conjunction with the addition of two dwelling units. Said property is shown on Assessor Plan 156 as Lot 1 and lies within the Mixed Residential Business district.

SPEAKING IN FAVOR OF THE PETITION.

Attorney Bernard W. Pelech identified himself as representing the applicants who had appeared before the Board on April 26 and, since then, had made considerable revisions to the proposed plan. They took the Board's previous comments into consideration and reduced the non-conformity to 3 feet. The driveway was expanded from 15 to 21 feet wide and they adjusted it to ensure that a 24 foot aisle was in place throughout the rest of the area.

Attorney Pelech cited a recent application for another property that had been passed as well as the case of *Vigeant v. the Town of Hudson* which states that, if a use is allowed, then an area variance cannot be denied because the ZBA disagrees with the use of property. He indicated several parts of the department memorandum with which he took issue, including the department's apparent belief that this is an overintensification of the property. That should not be considered by the Board. He stated all requirements were met with the exception of the 24 foot travel aisle and the Board had granted relief for driveways serving four units with much less. The current 15 foot travel aisle has functioned perfectly well, even with a commercial use on the property.

Regarding snow removal, Attorney Pelech stated the applicant has created snow storage areas and there is adequate space provided. There is greater safety in the on-site parking spaces and all parking spaces meet ordinance requirements. The layout is driven by a massive existing structure and that is why they are requesting a variance.

Addressing the various points of the *Boccia* analysis, Attorney Pelech stated the following:

- There are special conditions resulting in a hardship and requiring a variance, these including the size of the existing structure. This was a very intense unsightly commercial use with access to two streets. They will take access off Islington and increase the green space, along with installing a fence next to the abutting property and curing the run-off problem which has existed all along.
- There is no other way to achieve the 24 foot wide travel aisle, other than by tearing down part of the building or buying land from an abutter.
- The variance would be consistent with the spirit of the ordinance as it is a reasonable use and all of the structures conform. From a public safety standpoint, it would be a better situation.
- The variance will benefit the general public by creating two additional units of housing and replacing an unappealing structure with a more appropriate one.
- Substantial justice would be done as there is no benefit to the general public in denying that would outweigh the hardship to the applicant. This will increase the tax base and provide a safer site.
- The value of surrounding properties will not be diminished. The property will be more in keeping with neighborhood uses.

SPEAKING IN OPPOSITION TO THE PETITION.

Mr. Robert Bergeron identified himself as an abutter living at 18 Columbia Street right next to the property. He stated he is concerned about the snow removal situation and has pictures of the snow which can pile five feet high in the winter. There is no place to put it. He questioned the size of the parking spaces and, overall, felt it was an overintensification of use.

SPEAKING TO, FOR OR AGAINST THE PETITION.

Attorney Pelech stated that parking spaces comply and measure 8' 6" x 19' and reiterated that there was ample snow storage but they would accept a stipulation that in an excessive storm would remove snow if that was a primary concern.

Mr. Bergeron stood again and talked about the runoff of water onto his land. Chairman LeBlanc said he believed the applicant said they would put a curbing between the properties to channel to the street, to which Mr. Bergeron replied that it was not in writing. Attorney Pelech then stated they would agree to it being put in writing.

DECISION OF THE BOARD.

Mr. Steven Berg moved to grant the petition as presented and advertised, seconded by Mr. David Witham.

Mr. Berg stated that one of the purposes of the 24 foot requirement has to do with the ability of cars to pass each other and access for emergency vehicles and he felt 21 feet is wide enough for those purposes. Conversion to four units is permitted and all other dimensional requirements are met.

Addressing the required points of the Boccia analysis, Mr. Berg stated that the variance will not be contrary to public interest. In fact it is in the public interest to direct traffic off the main road and facilitate additional living units.

The special condition representing a hardship and requiring a variance is that the structure is on a corner lot with one road a main thoroughfare into town. The only way to accomplish conversion to four units is to use the Columbia Street access, which is only 21 feet wide. Any other way would require access off Islington Street, which is a traffic and safety issue.

Granting would be consistent with the spirit of the ordinance which promotes traffic safety. The number of units is permitted.

Regarding substantial justice, there is no greater public interest that would outweigh the benefit of allowing the owner to maximize the potential of the property. He added that there has been no testimony that the value of surrounding properties would be diminished.

Mr. Berg added two stipulations to his motion, the fence, and curbing to rectify drainage onto the neighboring property.

In seconding, Mr. David Witham stated that he agreed with some of the concerns of the planning department - snow and people backing out, etc. - but didn't feel they were reason enough to deny. If they had a 24 foot travel aisle, they could go ahead and the concerns of the department would still be there. The 21 foot travel is clearly wide enough for two cars. He added that he felt that all five criteria of the *Boccia* analysis were met.

The Board voted 5 to 1 to grant the petition with the two stipulations. Mr. Parrott voted against the motion.

3) Petition of **George A. Dodge III Revocable Trust 2002 and Erica C Dodge Revocable Trust 2002**, owners, for property located at **233 Dennett Street** wherein a Variance from Article IV, Section 10-402(B) is requested to construct a two story 24' x

36' barn/garage 24' in height with a 3'± rear yard where 18' is the minimum required. Said property is shown on Assessor Plan 142 as Lot 7 and lies within the General Residence A district.

Mr. Alain Jousse stepped down for this petition.

SPEAKING IN FAVOR OF THE PETITION.

The owner, Ms. Erica Dodge, stated that they are seeking a variance to allow a two-story detached barn/garage with a 3' rear yard setback where 18' is the minimum required. She maintained that the property has special conditions in that it runs from Dennett Street to Kane Street, almost as if this were a front setback, although technically per the Planning Department, it is a rear setback. She felt the barn would appear to be one of the buildings along Kane Street. Another special condition is that Kane Street is a dead-end street running parallel to Route 1 By-Pass and this would act as a block to that noise.

Ms. Dodge stated that the variance would not be contrary to public interest as the other structures on Kane Street are very close and right on the street. She felt it would be consistent with the spirit of the ordinance as garages are permitted and all dimensional requirements are met except the rear setback. Substantial justice would be done by allowing a structure on Kane Street in the traditional manner. This is a traditional barn/garage which would not diminish surrounding properties, but counteract the blight of the porn shop and other buildings along the bypass.

In response to questions from several members of the Board, Ms. Dodge indicated that the building had to be 3 feet from Kane Street instead of meeting the setback because, if they moved it, it left the bulk of the back yard on Kane Street fronting traffic and the porn shop. Access would be mainly on foot from the back yard, although there would be garage doors fronting on Kane Street that they would use occasionally. They are not extending the 30 foot square parking area for access as that area is for residents of the dwelling and the barn/garage would be for the owner's use. The existing fence along Kane Street would stay, except for a cut-out the width of the garage. Additionally, Ms. Dodge indicated that the garage might sometimes be used for vehicle storage and may have electrical, but no plumbing. It will not be used for living space.

There was some discussion of the swing of the garage doors, with the Board and Ms. Tillman indicating that a curb cut would be needed whatever the style of the doors as access from a city street to property is involved.

SPEAKING IN OPPOSITION TO THE PETITION.

Mr. Richard Coombs stated that he resides at 100 Kane Street and one of his concerns is that, as a rental property, it requires maintenance and the individuals for those coming to maintain the property already park on Kane Street. The first structure as you come up the street would be this two-story building. He feels it is unnecessary and would have a negative impact on property values and traffic. In response to a question from Mr. Witham, Mr. Coombs indicated that there have been many improvements to homes on

Kane Street in the last year. There are no other large structures like this that would stick out past those homes.

Mike Grassi identified himself as the owner, with his wife, of the property next door. He stated his concern was the installation of electricity and that it was going to look like a big barn which could present a view problem for fire vehicles.

SPEAKING TO, FOR, OR AGAINST THE PETITION.

Maggie Coate stated she lives on Dennett Street and felt the owners do amazing jobs with their houses and are an asset to the neighborhood. She would like the barn/garage because it would block a commercial entity from her and buffer noise.

Mr. Alain Jousse stated he lives at 197 Dennett Street and felt there was ample room on the parcel to locate this garage and still meet the setbacks.

Mr. George Dodge stated, for them, the issue is Route One noise – the piece of land the City would like to see them preserve as a setback is useless. Apart from the unpleasant experiences, if they put this barn in the center of the back yard, they would have a belt of land around it and all of the value of the land would have diminished. If required to do that, they wouldn't build. He hoped the Board could appreciate the noise from the bypass and the unsightliness. He added that along Dennett Street, many houses have detached structures with a setback of zero.

The resident at 88 Kane Street stated that the Dodges have always been good neighbors and have a nice piece of property that they maintain meticulously. She has enjoyed their yard and can't imagine that anything that they might do would be any more unsightly than the current view from her front door.

DECISION OF THE BOARD.

Mr. Steven Berg moved that the petition be denied, seconded by Mr. Nate Holloway for discussion.

Mr. Berg stated that, although he agreed with the reasons for wanting a garage, he didn't see any hardship or special conditions in the lot. The lot is actually unusually large for the neighborhood and he noted that Mr. Dodge had pointed out that a large number of applications that evening had to do with setbacks. He indicated they involved properties that were non-conforming and this property isn't. Mr. Berg stated he didn't feel another one of the criteria was met as there were other reasonable ways to accomplish their objective.

In seconding, Mr. Holloway agreed that he did not see a hardship.

Mr. David Witham disagreed with the maker of the motion stating that a hardship exists in that meeting the requirements creates an unusable area in the back. A special condition is that eminent domain projects like the bypass have created a blight on neighborhoods and this is a way to get a buffer. Denying diminishes their right to enjoy the yard.

Mr. Arthur Parrott felt that 3 feet was not enough of a setback and there were other ways to accomplish the aim. If it were moved in closer, vehicle access could be from either side of the lot and if Public Works would not approve a second curb cut on the same property, it would be an attractive alternative.

Mr. Berg wanted to expand on Mr. Witham’s comments. He also didn’t feel there was hardship involved if the applicants are asking for the greatest possible relief. This usually highlights the lack of need for a variance.

Chairman LeBlanc indicated he agreed with Mr. Witham.

The Board voted t3 to 2 to deny the petition, with Messrs. LeBlanc and Witham voting against the motion.

4) Petition of **Milan Marich and Sharon Marich**, owners, for property located at **315 Coolidge Drive** wherein Variances from Article III, Section 10-302(A), and Article IV, Section 10-401(A)(2)(c) are requested to allow: a) a 96 sf irregular shaped deck on the left side of the house with a 4’ ± rear yard where 30’ is the minimum required and b) a 1’ x 6’ bay window on the right side of the house within the required 30’ rear yard. Said property is shown on Assessor Plan 268 as Lot 40 and lies within the Single Residence B district.

SPEAKING IN FAVOR OF THE PETITION.

Ms. Sharon Marich identified herself as one of the owners of the property and referred to the packet which shows their house encroaching two feet onto the property line. After their house was built, the properties were sub-divided, and the property line ended just behind their steps. They would like to move the back door to the side of the house and put in a slider. They would remove the back steps and no longer encroach, but still there is not enough room between the house and the rear property line. Whatever they might want to do to the house is going to need variance approval except tearing it down.

**SPEAKING IN OPPOSITION TO THE PETITION.
SPEAKING TO, FOR OR AGAINST THE PETITION.**

With no one rising in response to speak, the public hearing was closed.

DECISION OF THE BOARD.

Mr. Steven Berg moved to grant the petition as presented and advertised, seconded by Mr. Alain Jousse. He stated that this is a textbook example of hardship needing a variance. Because of the way the property was sub-divided, no matter what the applicants try to do will require some sort of variance. Their request is a reasonable one.

Addressing the Boccia analysis, he listed the following reasons for granting the variance:

- Special conditions exist requiring a variance to enable the applicant’s proposed use. Due to an approved sub-division many years ago, affecting the

lot configuration, there is nothing that can be done to the property that will not require a variance.

- Due to the same conditions, there is no other reasonable way to achieve the desired benefit.
- Substantial justice is done and it is in the spirit of the ordinance to allow the applicants to improve their property and lessen an existing encroachment.
- The applicants have requested minimal relief which will not be contrary to the public interest or diminish the value of surrounding properties.

In seconding, Mr. Alain Jousse concurred, adding that they need to approve the request as there is no other way for the applicants to accomplish any improvement.

The Board voted unanimously to grant the petition as presented and advertised.

5) Petition of **Eugene Franceware Trust and Mary Franceware Trust**, owners, for property located at **40 Cornwall Street** wherein a Variance from Article IV, Section 10-402(A) is requested to allow a 4' x 12' shed with a 6"± left side yard and a 6"± rear yard were 5' is the minimum required in each instance. Said property is shown on Assessor Plan 144 as Lot 1 and lies within the Apartment district.

SPEAKING IN FAVOR OF THE PETITION.

Mr. Eugene Franceware stated that he and his wife own the property, which is rather small. A variance is the only way that they can accomplish what is needed, which is to replace a 6' x 6' metal shed which has been sitting in the southwest corner for the last twenty-five years and is beginning to corrode due to moisture. They need some sort of storage and to comply with the setbacks would mean putting the shed in the middle of the existing driveway. They are putting up a PVC fence to improve the property and have a petition of support signed by the abutters.

He added that the variance will not be contrary to the public interest but will improve the property. Special conditions are the property is very small and there is no other place to put a shed. They are not changing the use of the property so it will be consistent with the spirit of ordinance. The change will not hurt any other properties and will, in fact, enhance them.

In response to questions from the Board, Mr. Franceware indicated the fence is a six foot stockade type, with the shed only a little taller. The shed will be put where the existing one is placed and not attached to the fence as the manufacturer does not recommend it. The fence will be three to four inches from the property line.

**SPEAKING IN OPPOSITION TO THE PETITION.
SPEAKING TO, FOR OR AGAINST THE PETITION.**

With no one rising, the public hearing was closed.

DECISION OF THE BOARD.

Mr. Arthur Parrott moved that the petition be granted as presented and advertised, which was seconded by Mr. Steven Berg.

In making his motion, Mr. Parrott stated that the existing shed has apparently been there for some time with no problems or protest. The location up against the fence is logical, given the size and configuration of the lot and driveway and the request for outdoor storage is reasonable.

Following the *Boccia* analysis, specific reasons were the following:

- A variance will not be contrary to the public interest as the shed will be placed against a solid fence and will not interfere with anyone.
- The value of surrounding properties will not be diminished and substantial justice will be done by the replacement of a decrepit shed with a new one in essentially the same location.
- The hardships in the property requiring a variance to enable the proposed use are the size of the lot and the location and configuration of the house and driveway.
- Given these same elements, there is no other way to achieve the sought benefit.
- It is in the spirit of the ordinance to maximize open space by installing the shed in a corner which will be shielded by a fence.

In seconding, Mr. Steven Berg stated he agreed with Mr. Parrott. Putting the shed in the farthest corner possible will maximize open space and the fence will block it from view.

The Board voted unanimously to grant the petition as presented and advertised.

6) Petition of **Carl and Catherine Aichele**, owners, for property located at **244 Wibird Street** wherein the following are requested: 1) a Variance from Article IV, Section 10-402(B) to allow a 20' x 35' one story garage with a 5'± rear yard where 10' is the minimum required, and 2) a Variance from Article III, Section 10-302(A) to allow a 1'9" x 5'6" mudroom addition with a 7'10" right side yard where 10' is the minimum required. Said property is shown on Assessor Plan 149 as Lot 13 and lies within the General Residence A district.

SPEAKING IN FAVOR OF THE PETITION.

Attorney Bernard Pelech identified himself as appearing on behalf of Mr. and Mrs. Aichele and submitted photographs of the property to the Board. The Aicheles had recently purchased the property and determined the green four-car garage was beyond repair and larger than needed. They propose to construct a garage five feet shorter creating a five foot rear setback. He stated there are special conditions with regard to this property, indicating on the site plan to the left is the Carmichael property which has no street frontage. There is a right of way along the Aichele's side property line so the Carmichaels can have access to Wibird Street.

Attorney Pelech stated it is not a reasonable alternative to have the garage 10' off the property line because the existing driveway lines up with the old garage and they're trying to not relocate the existing driveway. The garage could be reconstructed from the inside out, but what the owners are attempting to do is make a more attractive, conforming and smaller structure which can still be accessed from the existing driveway. Another reason for not moving the garage is that there is less than 30 feet between the garage and the existing home and they would like to have some back yard.

The second part of request is a small mudroom closet, a 1'9" x 5'6" addition which is actually further away from the property line than the existing dwelling. Basically, it's a fill-in to the existing home.

Attorney Pelech stated that special condition of the lot with regard to garage is that it is encumbered by a right of way. To relocate the driveway would be substantial and the driveway would go onto abutting property. With regard to the closet fill-in, the existing structure is closer to property line than proposed. There are no reasonable alternatives to either proposal and no diminution of surrounding properties as the existing garage is in pretty bad shape. This will give the Carmichaels an additional five feet of light and air.

Attorney Pelech maintained that denying the variance will provide no benefit to the general public that would outweigh the hardship to the owner. It is not contrary to the spirit of the ordinance to make the garage more conforming and provide more light and air to the Carmichaels. It is also not contrary to the public rights of others as it keeps the existing right of way to the Carmichael home.

In response to a questions from the Board, Mr. Aichele indicated the closet-addition would be one-story and the area of the new garage would be 700 s.f. compared to 760 s.f. in the old garage.

**SPEAKING IN OPPOSITION TO THE PETITION.
SPEAKING TO, FOR OR AGAINST THE PETITION.**

With no one rising, the public hearing was closed.

DECISION OF THE BOARD.

Mr. Arthur Parrott moved, seconded by Mr. David Witham, that the petition be granted as presented and advertised.

In his opinion, the applicant is proposing to get rid of an eyesore. Following the *Boccia* analysis, the following were the reasons he and Mr. Witham cited for granting the petition:

- It will not be contrary to the public interest to allow these low profile structures, which are respectful of the value of surrounding properties.
- A hardship requiring a variance is created by the location of the previous garage and the house in relation to the lot lines, as well as by a right-of-way along the existing driveway.

- With the existing conditions and the right-of-way, there is no other way to achieve the sought benefit.
- The variance is consistent with the spirit of the ordinance by removing the existing garage from the property line and allowing a more conforming structure. The mudroom addition will require less relief from the ordinance than the existing house requires.
- Substantial justice will be done and the value of surrounding properties not diminished by allowing the replacement of an old unattractive garage structure with a new one.

Mr. Berg added that if the right of way didn't exist, there would be a myriad of possibilities for a new garage, but the right of way dictates design criteria.

The Board voted unanimously to grant the petition as presented and advertised.

7) Petition of **Joanne S. Holman Trust, Joanne S. Holman Trustee**, owner, for property located at **228 Highland Street** wherein the following are requested: 1) a Variance from Article IV, Section 10-402(B) to allow a 22' x 26' two story garage with a 4'± left side yard where 12' is the minimum required, and 2) a Variance from Article III, Section 10-302(A) to allow 26.7% building coverage where 25% is the maximum allowed. Said property is shown on Assessor Plan 130 as Lot 38 and lies within the General Residence A district.

SPEAKING IN FAVOR OF THE PETITION.

Mr. Lance Hellman identified himself as the husband of the owner Ms. Joanne Holman. In his presentation, he read from a long letter presented to the Board and file outlining the inadequacies and poor condition of the present garage. They are requesting to maintain the pre-existing non-conforming setback of 4' for the structure, but would expand the footprint where setbacks are already met and increase the height to 21'. He mentioned the hardship in the configuration of the lot and that compliance would shorten the driveway so that you couldn't park without going over the property line. As detailed in their letter presentation, he also covered the reasons why they felt they met all the tests of the Boccia analysis.

**SPEAKING IN OPPOSITION TO THE PETITION.
SPEAKING TO, FOR OR AGAINST THE PETITION.**

With no one rising in opposition, or speaking to, for or against the petition, the public hearing was closed.

DECISION OF THE BOARD.

Mr. Arthur Parrott moved to deny the petition, which was seconded by Mr. Alain Jousse.

Mr. Parrott stated that his concern was in finding within the guidelines something in the property which is unique and argues for a variance. He felt the property was very similar to others along the street, but has the advantage of being on the corner and having access to a driveway which is not against the house. He believed it was feasible to comply with the requirements and put in a garage which is substantially bigger than the existing one

by moving it a little away from Highland Street and closer to Broad Street. Alternatively, the height could be lowered, thus creating a lower side setback requirement. One of the primary reasons cited in their presentation letter was the view from the back of the house, but that is not considered in the ordinance. Some other aspects of the Boccia analysis may be o.k., but it is also not consistent with the spirit of the ordinance with regard to light and air.

Mr. Jousse stated he echoed Mr. Parrott's comments.

Mr. Berg stated he thinks there is a special condition, which is the long, narrow nature of the lot which creates design problems. He commended the design and agreed with the applicant that moving closer to the street won't allow parking in the driveway, but felt the setback requirements are to prevent larger, overpowering structures on top of one another. He felt the garage didn't have to have the designed pitch; that there was no hardship and there were other ways to accomplish the same purpose.

Mr. David Witham expressed concern about the impact on abutters, even though they have supported. He felt property values could be negatively impacted by this structure.

The Board voted unanimously to deny the petition.

It was moved, seconded and passed to table Petitions 8) through 11) to the July 26, 2005 meeting.

8) Petition of **Paul J. Carney**, owner, for property located at **54 Rogers Street** wherein the following are requested 1) a Variance from Article II, Section 10-207(14) to allow a 2nd dwelling unit to be created on a 2,682 sf lot where 3,000 sf of lot area is the minimum required and lot coverage exceeding the 40% maximum allowed, and 2) Variances from Article III, Section 10-303(A) and Article IV, Section 10-401(A)(2)(c) to allow the following: a) a 7.5' x 13'1" addition with a 1'± right side yard where 10' is the minimum, b) an open deck to the rear of the dwelling within the required 10' right side yard and exceeding the 40% maximum building coverage; and c) a front entry within the required 5' front yard and exceeding the 40% maximum building coverage. Said property is shown on Assessor Plan 116 as Lot 44 and lies within the Mixed Residential Office and Historic A districts.

9) Petition of **Gary P. Morin**, owner, for property located at **238 Melbourne Street** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) are requested to allow: a) an 8' x 18' one story addition with a 21'± front yard where 30' is the minimum required, b) a 12' x 23' deck and stairs with an 8'± left side yard where 10' is the minimum required; and c) 20.8% building coverage were 20% is the maximum allowed. Said property is shown on Assessor Plan 233 as Lot 82 and lies within the Single Residence B district.

10) Petition of **Mark and Lisa Herrholz**, owners, for property located at **126 Martha Terrace** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) are requested to allow: a) a 192 sf deck with a 35.7'± rear yard where 40' is the minimum required, b) the existing detached garage to be attached by adding a 264 sf breezeway now requiring a 20' side yard for the garage where 14'± exists; and, c) 21.6% building coverage where 10% is the maximum allowed. Said property is shown on Assessor Plan 283 as Lot 25 and lies within the Single Residence A district.

11) Petition of **Patrick Ellis**, owner, for property located at **235 McKinley Road** wherein a Variance from Article III, Section 10-302(A) is requested to allow a 4' x 21 one story addition to the front of the dwelling with a 27'± front yard and a front entry porch 4' x 9' with a 23'± front yard where 30' is the minimum required in both instances. Said property is shown on Assessor Plan 251 as Lot 28 and lies within the Single Residence B district.

III. ADJOURNMENT.

The motion was made, seconded and passed to adjourn the meeting at 10:20 p.m.

Respectfully submitted,

Mary E. Koepenick
Secretary

mk