

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

**7:00 p.m.**

**CITY COUNCIL CHAMBERS**

**August 16, 2005**

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

**MEMBERS EXCUSED:** Chairman Charles LeBlanc

**ALSO PRESENT:** Lucy Tillman

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With Vice-Chairman David Witham presiding, the meeting of the Board of Adjustment was called to order at 7:00 p.m.

**I. OLD BUSINESS**

A) Approval of Minutes:

August 25, 2004	November 23, 2004
October 19, 2004	December 14, 2004
October 26, 2004	April 26, 2004
November 16, 2004	July 26, 2005

It was moved, seconded and passed unanimously to defer consideration of the specified Minutes until the August 23, 2005 meeting.

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B) **140 Edmond Avenue.** Review engineered site plan, as a stipulation of approval at the May 17, 2005 meeting of the Board of Adjustment.

Vice-Chairman David Witham stated that the Board had granted a variance for this property in May with one of the stipulations being to produce an engineered site plan, which is now before them. They need a motion to accept it and to move it on for site review.

Ms. Lucy Tillman stated that a copy of the letter of decision for the May 17 meeting had been provided to the Board and Attorney Pelech, along with a copy of the City's wetland map for the portion adjacent to the property. The property is within the 100 foot buffer and the parking spaces being created will need a Conditional Use Permit, which would be acted on by the Conservation Commission and the Planning Board. She noted slight differences between the May plan and the one provided by the engineer, notably the access to the three parking spaces on

the side of the lot providing for the handicapped. The hatched out area extending from Edmond Avenue up to the parking represents where an easement will be needed to access the spaces.

Attorney Pelech agreed that there were minor differences between the two plans, the primary one being that he did not provide in his plan for a handicapped parking space. He noted the abutter involved has agreed to grant the needed easement. They would like approval to go forward now for Site Review and to seek the Conditional Use Permit. He noted there is no plan to pave the parking spaces and there will be no runoff into the wetlands.

## **DECISION OF THE BOARD**

Mr. Nate Holloway moved to accept the engineered site plan to satisfy the previous stipulation, which was seconded by Mr. Alain Jousse and approved 5 to 1 by voice vote. Mr. Arthur Parrott voted against the motion.

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## **II. PUBLIC HEARINGS**

1) Petition of **Durgin Square Shopping Center / DSP Endicott Partners c/o C W Group, owner**, for property located at **1600 Woodbury Ave** wherein a Variance from Article IX, Section 10-906(A)(1)(a) is requested to allow the relocation of the existing 150 sf freestanding Primary Entrance Sign to the new entrance with a 5' right side yard where 25' is the minimum required. Said property is shown on Assessor Plan 238 as Lot 16 and lies within the General Business district.

### **SPEAKING IN FAVOR OF THE PETITION**

Attorney Pelech stated he was representing the applicants whose property is on Woodbury Avenue where the Ruby Tuesdays will be going in. The construction for that project includes a new primary entrance into the shopping center which lines up with Commerce Way at a signalized intersection and is more appropriate than the one down by the animal hospital. Because of the difficulties in obtaining a last parcel of land for the project, the primary entrance sign for the center had been put in an unusual position between Boston Market and Mr. Fusini's property. They are now asking to take the same sign and relocate it adjacent to the primary entranceway. He stated that the sign meets the setback from Woodbury Avenue and is smaller than the maximum allowed for a free standing sign under the Ordinance. The problem is that it is five feet from the side property line. There is an easement which does not allow them to put the sign the required 20 feet back from the property line.

Addressing the points of the *Boccia* analysis, Attorney Pelech stated that a variance is needed due to special conditions resulting from a sewer easement which prohibits the erection of any structure within it. It would be a benefit to the public to have the sign adjacent to the main entrance to the shopping center, relieving the traffic pressure on the Applebee's intersection. Substantial justice would be done because granting the variance would be in the public interest and it will not create a diminution in property values. This is a previously existing, aesthetically pleasing sign which is not contrary to the ordinance.

In response to questions from Mr. Jousse and Mr. Berg, Attorney Pelech responded that the sign could not be located on the opposite side of the entrance as that would be on property not owned by Durgin Square; and that it was the same sign as previously installed which was taken down for construction. Mr. Berg noted that with the variance granted in 1998 there was a stipulation that four feet would be kept open under the sign and Attorney Pelech said they would accept that.

**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. Berg moved to grant the petition as presented and advertised with the stipulation that a 4 foot area remain open and kept clear for the line of sight. Mr. Marchewka seconded the motion.

Mr. Berg stated that nothing is changing. They would just be granting permission to do the same thing, only move the sign in a way that actually improves the situation. There is a traffic problem there and it makes sense to put the sign where proposed to direct traffic to the entrance while improving traffic flow on Woodbury Avenue and the side streets. The only reason they can't meet the setback is the sewer easement which is a unique situation.

Addressing the *Boccia* analysis, Mr. Berg stated that this would not be contrary to the public interest as it is what was there prior to construction. The special condition requiring a variance is the easement and there is no other way to do what is requested. There is only one entrance and placing the sign anywhere else would be in the parking area. It meets the spirit of the ordinance governing signs and setbacks.

In seconding, Mr. Marchewka stated he agreed with Mr. Berg. Given the recent development of Ruby Tuesdays, this is a more appropriate location for the sign and, because of the easement, there is no way to locate it 20 feet back without sticking it in the middle of the parking lot.

The Board voted unanimously to grant the petition with the designated stipulation.

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2) Petition of **Jonathon P. and Cheryl G. Booth, owners**, for property located at **19 South School Street** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) are requested to allow a 6' x 16' two story addition with a 4'6"± left side yard where 10' is the minimum required. Said property is shown on Assessor Plan 101 as Lot 73 and lies within the General Residence B and Historic A districts.

With Vice-Chairman Witham stepping down for this petition, the Chair was assumed by Mr. Marchewka who read the petition before the Board.

**SPEAKING IN FAVOR OF THE PETITION**

Mr. Jonathon Booth stated that he and his wife Cheryl had lived at the South School Street property for ten years. They are trying to address several issues, including the stairways. The house has two very narrow steep stairways on which people have fallen. The second issue has to do with the bathroom upstairs which creates a lot of wasted space. There's also a general issue with the maze-like area upstairs which creates a lot of wasted space. The design proposes to solve these problems with minimal impact. The stairs would be built to code with very little visibility from the neighbor on that side of the street. The bathroom would be moved to the exterior of the house and fix the problem of non-functional space.

Mr. Booth stated that they feel this is a modest request. The neighbors on the side involved had signed a letter of support, which he passed around. From the street side, the addition would be hidden behind the neighbor's 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. Parrott moved to deny the petition, with Mr. Jousse seconding for discussion.

Mr. Parrott stated that this is a narrow lot with only 45 feet of street frontage and the total area only 5,422 s.f. The requirement for a 10' setback is not excessive and this proposed addition would encroach almost 100% into that side setback. He felt this represented overdevelopment of the lot. A rear addition could be constructed within the building envelope and leave a 53'x40' backyard. The lot is built out enough and it is in the spirit of the ordinance to maintain some distance between buildings.

Mr. Jousse, in seconding, added that 80% of the proposed addition is within the setback which is asking a lot of relief.

Ms. Tillman stated she would like to clarify for the record that the new coverage with both additions will only be 28.7 % and the maximum allowed is 30% so they're well within the allowed coverage and it is only the side addition that requires a side yard variance.

Mr. MacCallum stated that, while he agreed with Mr. Parrott and Mr. Jousse and is not crazy about side additions, he would reluctantly support a motion to grant. The factors he considered are that the neighbor's garage acts as a buffer between the addition and the house. Expansion that doesn't meet a side setback requirement is less offensive against a garage than a residence. Also, the proposed addition is going to be inset from the face of the existing left side wall so is not going to crowd the left side of the neighbor's property any more than the existing left side wall is already doing, in fact less. While he doesn't like it and he agrees with Mr. Parrott that the structure is already big, it's acceptable. He will vote against the present motion.

Mr. Berg stated they are charged with looking at zoning ordinances which allow 30% lot coverage. The existing house is well within that number and this proposal brings up to 28.7%. While they may say it still looks like too much house, he didn't feel that was the issue – the question was the setback and the addition will be less non-conforming than the existing home.

Mr. Marchewka indicated he would not support the motion to deny. The property is under the lot coverage and is a modest structure on a very small lot. The angle of the lot also creates a hardship with regard to the setbacks. The applicant is trying to modernize their interior and make it safer and more usable. He didn't see how it would impact the neighbor, who sent a letter in support.

The Board voted 4 to 2 against the motion to deny the petition, with Messrs. Jousse and Parrott voting in favor.

Mr. Steven Berg then moved to grant the petition as presented and advertised, seconded by Mr. Nate Holloway.

He stated the issue is the side setback and he can see the homeowner's headache. It makes sense to bump the house out there and he supported the applicant's aims. He didn't feel that they were looking for more relief than what they currently have. The side of the house where it violates the setback is currently between 1' and 3' from the property line. With the addition, the applicants would extend that line back 16' running from 4' 6" to 7' or 8' from the side property line.

With specific reference to the Boccia, he cited these specific reasons for granting the variance:

- This would be a small addition to an existing structure which would be tucked in a corner and not visible to the public.
- A hardship exists requiring a variance due to the shape of the lot being narrow and deep and the house being a conventional width.
- With the existing floor plan, there is no other feasible way for the applicant to achieve the benefit sought without a variance.
- It is consistent with the spirit of the ordinance to seek the minimum relief.
- There will be no diminution in the value of surrounding properties and the abutter affected has spoken in favor of the petition.

The Board voted to 4 to 2 to grant the petition, with Messrs. Jousse and Parrott voting against the motion.

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Vice-Chairman Witham resumed the Chair.

3) Petition of **Daniel C. Bogannam, owner**, for property located at **71 Baycliff Road** wherein the following are requested: 1) Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) to allow a 14' x 14' two story addition to the existing building with a 22' 5"± front yard and a 3'± rear yard where 30' is the minimum required in both

instances, and 2) an Equitable Waiver as allowed in NH RSA 674:33-a (Equitable Waiver of Dimensional Requirement) to allow the existing garage/deck with a 2' ± left side yard where a Variance for 8' was previously granted based on an earlier survey. Said property is shown on Assessor Plan 207 as Lot 46 and lies within the Single Residence B district.

### **SPEAKING IN FAVOR OF THE PETITION.**

Mr. Daniel Bogannam, owner of the property, outlined what he was seeking that evening. When Mr. Berg mentioned the departmental memorandum citing a new survey, Mr. Bogannam indicated he had brought a corrected plan to the hearing, which he submitted for the record.

Mr. Bogannam stated he would first address the Equitable Waiver portion of his petition. In reference to NH RSA674:33-a, there are a number of points needed to be met to grant and he would just give his response to each of the points. The building permit for the garage and the deck was issued in February of 1999 based on the owner's agent's plan, which was done in 1995. This is the plan previous to the one he just gave to the Board and which represented the original granting for the left-side variance.

The plan was prepared for the former owners, Mr. Bogannam continued, by Knight Hill Land Surveying Services and construction was completed based on that plan. The corrected plan, which the Board has before them, was done by the same surveyor. It was redone because an error was made by the surveyor, which was brought to light by one of Mr. Bogannam's abutters who was also having a survey made. Mr. Bogannam presented a memo and letter relative to the change in plan and dimensions.

Ms. Lucy Tillman indicated that the original file containing the old information was also being passed along to the Board.

As the Board members looked at the plans and material, there was some discussion about the indicated and scaled dimensions. Mr. Bogannam indicated it was hard to get exact measurements and it would be 2 feet plus or minus.

Referring to the second point for an equitable waiver, he submitted that a good faith error was made. He added that the building existed for approximately 5 years without presenting a public or private nuisance or diminution in values. To correct the violation would be unreasonably costly and far outweigh any public benefit. It would be inequitable to require that it be corrected. He stated that it was only in speaking with Ms. Tillman a week or two ago that it was discovered that a violation existed.

There followed considerable discussion among the Board members and Mr. Bogannam regarding the plans, dimensions and structures, including the garage, deck and addition #1, and setbacks. With the confusion in the lot layout and discrepancies between plans, and without a previous surveyed plan from the Inspection Department file or a certified "as-built" plan to compare, it was felt that the information before the Board in order to consider the application was not adequately clear and complete.

Mr. Parrott made a motion to table the petition until the September 20, 2005 meeting of the Board and require an “as-built” site plan, which was seconded by Mr. Holloway and passed unanimously by voice vote.

Immediately after the vote to table, Mr. Steven Little, an abutter, spoke up and stated they would be out of the country the next month. There was further discussion among the Board and the parties involved regarding the implications of removing the petition from the table and having Mr. Little speak for the record that evening, or having Mr. Little submit a letter for the next meeting.

The Board voted 5 to 2 against removing the petition from the table, with Mr. Parrott and Mr. MacCallum casting dissenting votes.

Vice-Chairman Witham declared that the petition remained tabled until the September 20, 2005 meeting and an “as-built” site plan will be required to hear the petition.

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4) Petition of **Theresa N. Pesarik, owner**, for property located at **214 Elwyn Avenue** wherein the following are requested for the construction of a 15’ x 28’ garage with loft: 1) a Variance from Article IV, Section 10-402(B) to allow a 3’ left side yard at the front left corner and a 6’ left side yard at the rear corner where 11’ is the minimum required, and 2) a Variance from Article III, Section 10-302(A) to allow 29.1% building coverage where 25% is the maximum allowed. Said property is shown on Assessor Plan 112 as Lot 26 and lies within the General Residence B district.

**SPEAKING IN SUPPORT OF THE PETITION.**

Attorney Pelech, representing Theresa Pesarik, stated that these lots were created prior to zoning and, like many lots, garages were placed in close proximity to lot lines. This results in Mrs. Pesarik’s garage being only 1.8’ or 2’ from the lot line. The garage is only 11’ wide and she can’t open her car doors inside. Earlier this year, they came before the Board seeking to enlarge garage, while maintaining a 1.8’ side setback. The problem is they can’t move the garage much further away from the side property line and still access it because then it would be behind her house. The proposal now is to rotate the garage so it is 3’ off the property line and still allow access.

Attorney Pelech stated there will be no diminution in value as the garage is in keeping with the architecture of the neighborhood. The proposal is for a loft area above the garage which will only be storage and stairs for Mrs. Pesarik to access. Given the pitch of the roof, there is very little space above the garage. They believe substantial justice would be done because the benefit to the public of enforcing the setback is not outweighed by the detriment to Mrs. Pesarik when she can’t open her doors in the garage. There will be no effect on the public interest, he stated, and the structure will actually be more conforming.

Attorney Pelech stated a variance would be in the spirit of the ordinance allowing better space and light and air, outweighing the slight increase in coverage. They believe a hardship results from the special conditions inherent in the lot – the narrowness and location of the driveway and

the location of the garage for many years. There is no reasonable alternative – no way to bend around and still allow access. He concluded by stating that they have made a sincere effort to make the proposal more conforming that what was presented in January.

Ms. Tillman asked if the plans referred to were from November 4 and, if so, the Board didn't have so they were circulated around.

Mr. Berg asked the department why the previous petition had been turned down and Ms. Tillman replied that an abutter came out and said it would interfere with their right to enjoy their property. She didn't know if they were present to speak to the application or not.

Attorney Pelech indicated there is also a fence along the property line which provides a buffer. In response to a question from Mr. Witham, he indicated the difference in the two petitions is that the December plan called for maintaining the existing side setback 1.8' along the length. Because of concerns of the neighbor expressed at the January meeting, Mrs. Pesarik has angled the garage.

Ms. Tillman stated that, for the record, it is the same garage as what was presented in November, just relocated or tilted.

Mr. Witham indicated that Attorney Pelech had said the garage was redesigned and Attorney Pelech responded that the site plan was redesigned - the garage plan remained the same.

### **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. Steven Berg moved to grant the petition as presented and advertised, seconded by Mr. Jousse.

Mr. Berg stated that the applicant is not looking for any more relief but is making the side yard less non-conforming. The existing structure is too close and doesn't meet modern car requirements. The applicant is requesting replacement with a more functional structure, further away from the property line. He saw no other way to achieve the desired outcome. They've done the best they can by moving it between three and six feet from its current location just over one and a half feet.

He stated the variance was not contrary to the public interest and, continuing with the points of the *Boccia* analysis, added that the special conditions are that it is a small lot and the setback of the existing garage to the property line. The applicant had also, if he understood correctly, erected a fence to address abutters concerns. He noted the fact that the abutter had not come that evening or written or submitted comments and felt they could assume from this silence that this plan is acceptable. He added that substantial justice would be done as the garage better conforms



to current expectations and he didn't see the impact on surrounding properties as there is a garage there now and there will be a garage there later.

Vice-Chairman Witham indicated he believed it was the abutter's fence and Attorney Pelech concurred. Mr. Berg modified his comments to state that the person who was aggrieved before had mitigated the situation by putting up a fence.

In seconding, Mr. Jousse said there were substantial changes since the last time and it could not be accomplished any way other than tilting the garage and still have straight access from the driveway. Making them turn the driveway around would render the backyard useless.

Mr. MacCallum indicated he would be voting against the motion due to the case of Fisher v. Dover. The minutes for the December 28, 2004 meeting were not available so he can't tell definitely all the reasoning, but it was denied by a 7-0 vote. His notes reflect that an attorney appeared representing the Lincolns who were the abutters and spoke in opposition to the petition. He didn't feel the Board could presume that, because the abutter did not appear, it meant approval – it could also mean their resistance was worn down and Fisher v. Dover was supposed to prevent this. He added that there was no change in the configuration of the proposed garage, only moving and this is not a substantial enough change. A garage is not a necessity and there is no reason to allow any expansion, especially with a loft.

Mr. Parrott agreed, stating that a foot and a half is not a significant change and it's an attempt to abuse the Board by saying it's a new situation. Applicants are supposed to follow the principle of least relief to gain desired result, but the petitioner has not made an attempt to ask for minimum relief. By shortening the garage to 22 feet, they could swing the structure more and get a lot closer to full compliance while preserving the rear lot line setback.

Mr. Berg felt that Fisher v. Dover dealt with use variances and didn't feel it had merit in this situation.

Vice-Chairman stated that having a motion to grant means they had moved beyond a discussion of Fisher v. Dover and it is the motion they are discussing. He added he will support the motion. He looks at whether a proposal is the minimum relief to achieve a goal without affecting the neighbors. He believed the stairs at the end to access the loft are the reason for the extended length and they are coming back in good faith.

The Board voted 5 to 2 to grant the petition as presented and advertised, with Messrs. MacCallum and Parrott voting against the motion.

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5) Petition of Dennett Prospect Realty Investments LLC, owner, for property located at 69 Prospect Street and Dennett Prospect Realty Investments LLC, owner, for property located at 73 Prospect Street wherein the following are requested: 1) Variances from Article III, Section 10-301(A)(2), Article III and Article IV, Section 10-401(A)(1)(b & c) to allow two of the six dwelling units (on lot 28) to be relocated into a separate building (on lot 29) with both lots being combined and the building on lot 29 being expanded to accommodate the dwelling units, and 2) Variances from Article XII, Section 10-1201(A)(3)(a)(3&4) to allow 8 parking spaces to back

out onto the street and 6 of the 8 spaces to be double stacked. Said property is shown on Assessor Plan 142 as Lots 28 & 29 (to be combined) and lies within the General Residence A and Historic A districts.

Mr. Berg stepped down for this petition.

### **SPEAKING IN FAVOR OF THE PETITION**

Attorney John Bosen stated he is representing the applicants and that Mr. Bob Dennett and Mr. Alex Ross from Ross Engineering are there as well as the general contractors. He passed out some additional photos, as well as a handout showing how lot improvements will lessen the non-conformity of existing conditions.

He stated the lot was originally owned by Mr. Dennett's family many years ago and his lifelong dream was to purchase the property and restore it. The property is in need of serious renovations. The photos by Steve McHenry show the exterior in winter and the ones tonight in summer. It looks worse in person and the interior is in much worse shape. The buildings sit on two separately deeded lots. Lot 28 is a 6 unit residential apartment building and Lot 29 is a concrete building which was last a bakery, now vacant for many years. It is proposed to combine two lots into one, renovate the building on lot 28, reducing it to a 4 unit apartment building, and renovate the bakery building into two units. The result is 6 one bedroom units. He noted that Steve McHenry had an informal session with the Historic District Commission, which went very well.

Attorney Bosen stated they need four variances. The first is from the section that states there can be no more than 1 free standing residential building on a single lot. They are seeking to have two residential buildings on a combined lot, which makes sense from a practical and zoning standpoint. They have two non-conforming uses and combining will lessen the non-conformity with respect to lot dimensions and improve lot coverage, with the end result being 20% lot coverage. They will exceed the open space requirement and provide 9 parking spaces.

The next variance is from Section 10-401(A)(1)(b & c) which states a non-conforming use in one portion of a building shall not be extended to other sections and a non-conforming use cannot be extended to another part of the land. They seek a variance to allow 2 of the 6 units to be relocated into the bakery building and to allow those units to be accommodated on the existing footprint. As justification, they are not expanding the number of dwellings and this is the most practical and reasonable way to make this project work.

The last two variances pertain to the parking layout. There have been 6 units with no organized parking for 30 years and the tenants parked all over the place. There will now be nine spaces with each unit having an assigned space. Overflow could park on the street or, if a unit has 2 cars, they would be in spaces where they could move each other's vehicles. No unrelated tenants will block each other.

The last section would require a circular drive to prevent backing out into the street. Based on the location of the house on the lot, a circular drive is not possible. The traffic on the street is slow traffic with good visibility. This would be an upgrade to the parking situation where they now park on the street and block each other. They did consider other parking options but they

were not practical, from an economic or safety standpoint – there would be no room for fire vehicles.

Attorney Bosen stated there would be no decrease in property value as they will be spending \$200,000 to renovate and repair, with a positive impact on property values and tax revenues. No noise or smoke would be created. The electrical and plumbing will be upgraded and the project will be submitted for Site Review.

The zoning restriction as applied interferes with the reasonable use of the property considering the unique setting. Years ago, the property fronted Dennett Street but now sits behind four houses that are on Dennett Street. Lot 28 is very slopey and prevents any parking. What is also unique is having 6 pre-existing units on Lot 28 and, on Lot 29 there is a cinderblock construction last used as a bakery but now sitting in a residential zone. It makes sense to combine the lots.

Addressing another point of the Simplex analysis, Attorney Bosen stated no fair and substantial relationship exists between the ordinance and restrictions on the property. He felt the question was whether relief could be granted for this property without complying with the purpose of the ordinance. The applicant will improve the property without adding any additional dwelling units.

He did not feel a variance would injure the public or private rights of any other person. Substantial justice would be done by allowing a newly renovated, more conforming property with on-site parking. The spirit of the ordinance would be served by less congested streets, a more conforming property with no added dwelling units, and little or no impact on abutting properties or City resources

In answer to questions from Mr. Parrott, Attorney Bosen clarified that there are eight parking spots lined up and one in front and that the parking spaces do meet the dimensional requirements. Mr. Alex Ross identified himself and indicated the size of the spaces are 8' 6" x 19' and they are perpendicular to the property line.

### **SPEAKING IN OPPOSITION TO THE PETITION.**

Catherine Keenan identified herself as living at 52 Prospect Street and, up until this point, had been in support. She does have a concern about parking and sent an e-mail regarding this. She stated there are tarred-over parking spaces on the property and questions whether all parking will be off the street. While she favors any improvement, parking is a problem on a very narrow street with several multi-units. Snow removal is slow and all of the snow ends up in the applicant's front yard. She would like the Board to consider asking for two spaces per unit.

When Mr. MacCallum asked if she had had a chance to look at Mr. Dennett's parking plan, Ms. Keenan indicated "no" – that what he dropped off at her house was quite different from what had been presented. After a comment from Mr. MacCallum she stated she felt the situation was being misrepresented as there are parking spaces there and cars for a number of years, some of them abandoned. She understood Attorney Bosen to say there had not been parking, not just that there were no lined spaces.

Attorney Bosen stepped up to clarify the parking. He stated, first, that there were no lined parking spaces and, secondly, that there were two lots involved. Lot 28 has no parking at all but has the 6 units. Lot 29 has no units but has a parking area.

Mr. Patrick Stevens stated he lives at 21 Prospect Street. He applauded the owner for making improvements but one of the primary purposes of zoning is to establish appropriate density for development and he detailed the various types of variances he opposes, including parking. He stated that, if you combine the lots, there is parking there now. He doesn't support double-stacked parking, except if it could be absolutely guaranteed that it was limited to individuals in the same household. Finally, it's important that the property be redeveloped, but an increase in density is not in the neighborhood's interest and would set a bad precedent.

Ms. Janice Turner identified herself as the owner of 71 Prospect Street, the property right behind the former bakery. She referred to the plan that had been presented and a driveway between the house and the former bakery. She's very pro this development, but her concern is the apartments in the former bakery which will now overlook their house. Another concern is the proposed siding on the former bakery building which will narrow, although slightly, the driveway to their house and they don't want to be responsible for any possible damage to the building. She's discussed a possible right-of-way with the owner as an alternative.

Ms. Rosalind Grant identified herself as living across from the property. She is excited about the changes but also concerned about the parking issue with the busy narrow street. Now is the time to address it.

### **SPEAKING TO, FOR, OR AGAINST THE PETITION**

Mr. Steve Benson stated he lived at the corner of School Street and would like to speak in favor of the proposal. Parking can be worked with on-site. He was excited to see something done.

Attorney Bosen wanted to, first, address Mr. Steven's comments. He stated they are not going to be increasing the density of this project. There will be no change in the number of units or the footprint. With respect to parking, while acknowledging it is not a perfect arrangement, he maintained it is a much improved arrangement. Mrs. Grant stated they are not using the street now and, if that is the case with the existing situation, tenants would be much less likely to do so with the improved plan.

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

### **DECISION OF THE BOARD**

Before hearing from the Board, Ms. Tillman stated she wanted to make two points for the record. First, she interpreted parking space #9 as not needing a variance. She believed someone would pull in parallel to the house, not needing to back out, so it was not advertised. Secondly, it's been represented that the "bakery building" will not be removed – they will build on top of it. If

it's found that it needs to be removed and rebuilt with a non-conforming setback, that issue would need to be addressed at that time.

Mr. Marchewka moved that the petition be granted as presented and advertised which was seconded by Mr. Jousse.

Mr. Marchewka stated that, on the surface this looks like a considerable amount of relief, but really what they're proposing is a much better situation than what currently exists. There are now 6 apartments using both lots for parking and the proposed plan does not increase the number of units only the square footage. Improving the former bakery building is a positive, and combining the lots is a positive for conforming purposes, as demonstrated by the engineer. In the overall scheme of things, it was a reasonable plan and request.

With specific reference to the Boccia analysis, the following were the reasons Mr. Marchewka and Mr. Jousse cited for granting the petition:

- With no change in the number of units, it is in the public's interest to develop this property as presented and the delineation of parking spaces should improve the street parking situation.
- Special conditions exist so that the zoning restriction would interfere with the landowner's reasonable use of the property. There currently are six units and that will not change – they will just be spread into two buildings.
- Multi-unit properties are not out of character for this neighborhood so no fair and substantial relationship exists between the ordinance and the restriction on the property.
- Providing a better situation will not injure the public or private rights of others.
- The variance is consistent with the spirit of the ordinance as, combining the two lots will bring the overall property more in conformity.
- Substantial justice will be done and the value of surrounding properties will not be diminished by allowing the applicant to improve the property for his benefit and that of the neighborhood.

In addition, Mr. Jousse stated that maintaining the status quo in this situation was not in the best interest of the City and pointed out that there were really no strong objections from the neighbors. The concerns were with parking on Prospect, Walker and No. School St. which is almost non-existent. At least now, it's going to be delineated as to who belongs to what parking space. He added there would be no increase in demand on City services.

Mr. MacCallum stated that, while he liked everything else about the proposal, he believed there would be an increase in density and number of cars parked on the street which he did not believe was fair to abutters.

Vice-Chairman Witham stated he would support the motion. He is hesitant to support parking backing into the street, but he felt the speed limit was relatively low and the vehicles would back out at an angle where traffic was slowing down. The concern with snow is not part of the

ordinance and the stacked parking will only be an inconvenience to those using it. Overall he felt it was a positive plan.

The Board voted 4 to 2 to grant the petition as presented and advertised, with Messrs. MacCallum and Parrott voting against the petition.

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The Board voted 6 to 1 to table the following petitions 6) through 11) to the August 23, 2005 meeting, with Mr. Marchewka casting a dissenting vote:

6) Petition of **Cynthia Caldwell, owner**, for property located at **147 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 24' x 24' attached garage with a 10'4"± left side yard where 20' is the minimum required and a 27' 3/4"± rear yard where 40' is the minimum required, b) a 14' x 20' deck with a 27' 6"± rear yard where 40' is the minimum required; and, c) 19.9% building coverage for all where 10% is the maximum allowed. Said property is shown on Assessor Plan 283 as Lot 8 and lies within the Single Residence A district. Case # 8-6

7) Petition of **Murat and Sandra Ergin, owners**, for property located at **251 Walker Bungalow Road** wherein Variances from Article III, Section 10-302(A) and Article XV, Section 10-1503(A)(D)(2) are requested to allow a 10' x 44' front porch with an 18.5' front yard where 30' is the minimum required. Said property is shown on Assessor Plan 202 as Lot 13-2 and lies within the Single Residence B district. Case # 8-7

8) Petition of **Adam H. and Francis Price, owners**, for property located at **127 Martha Terrace** wherein the following are requested: 1) a Variance from Article III, Section 10-302(A) to allow a 22' x 60' addition to the right side of the existing single family dwelling with: a) a 7' right side yard where 20' is the minimum required and b) a 6' x 28' covered connecting breezeway creating a total for both additions of 19% building coverage where 10% is the maximum allowed, and 2) Variance from Article II, Section 10-206 to allow two attached dwelling units on a lot where only one dwelling unit per lot is allowed. Said property is shown on Assessor Plan 283 as Lot 7 and lies within the Single Residence A district. Case # 8-8

9) Petition of **Harold and Elizabeth Cummings, owners**, for property located at **39-41 Newcastle Avenue** wherein a Variance from Article III, Section 10-301(A)(2) is requested to allow conversion of an existing garage into a 4<sup>th</sup> dwelling unit in a district where all dwelling units shall be in one building. Said property is shown on Assessor Plan 101 as Lot 36 and lies within the General Residence B and Historic A districts. Case # 8-9.

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### III. ADJOURNMENT.

The motion was made, seconded and passed to adjourn the meeting at 10:00 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary