

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

7:00 p.m.

CITY COUNCIL CHAMBERS

September 20, 2005

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

MEMBERS EXCUSED: None

ALSO PRESENT: Lucy Tillman

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Chairman LeBlanc called the meeting to order at 7:00 p.m.

**I. OLD BUSINESS**

A) 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.

A motion was made and passed unanimously to table the petition to a time indefinite.

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B) Request for Rehearing by Alan and Carol Lincoln on the petition of **Theresa N. Pesarik, owner**, for property located at **214 Elwyn Avenue** wherein the following were granted 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.

DECISION OF THE BOARD

Mr. Witham asked Ms. Tillman why the hearing notice sign had not been posted on the property and Ms. Tillman responded that posting is requested, but not required by the ordinance.

Mr. Jousse moved to deny the request for rehearing, which was seconded by Mr. Holloway.

Mr. Jousse stated he didn't see any error in procedure or application of law and no new evidence had been presented that was not available at the time of the original hearing.

Mr. Parrott stated that this is a matter of substance. Through no fault of their own, the abutters did not receive the notice. The sign was not posted so their testimony was not heard. He felt this wa an unusual case and a rehearing was appropriate.

Mr. Witham stated he agreed with Mr. Parrott. The new information has to do with criteria and the surrounding property values. He relies on the fact that, if an abutter does not testify, they are not against it. The new information is that the abutters weren't there to speak and there is a detriment to their property value. For those reasons, he stated, it is worth rehearing.

Mr. Berg agreed. The abutters should have an opportunity to speak.

Chairman LeBlanc stated he will support the motion to deny. It is not the Board's concern that mail had to be forwarded up to Maine. This has happened in the past and they have denied a rehearing on the same grounds. The Board and City have done due diligence and do not owe a special hearing because the abutter didn't receive the notice which was sent.

A motion to deny the rehearing passed by a vote of 4 to 3. Messrs. Berg, Parrott and Witham voted against the motion.

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**II. PUBLIC HEARINGS**

1) **Petition of 909 Islington Street LLC, owner, Jonathan Blakeslee d/b/a White Heron Tea LLC, applicant**, for property located at **909 Islington Street** wherein a Variance from Article II, Section 10-208 is requested to allow a bulk tea re-packaging and wholesale distribution business in a district where such use is not allowed. Said property is shown on Assessor Plan 172 as Lot 7 and lies within the Business district.

**SPEAKING IN FAVOR OF THE PETITION**

Jonathan Blakeslee stated he is the applicant and owner of White Heron Tea. Included in their submitted documents were a view of the entire building, the layout and a page showing more detail. The business he wants to conduct is as an organic tea packer. Other tenants in the building include Seacoast Radio and an electrician – a wide variety of businesses. The building is an odd shape, 200 feet back from the road, which is not ideal for retail. He stated the business would be wholesale – repacking tea, sending out

orders and receiving supplies via UPS. There would be no retail traffic or problem to abutters. The tea packing area takes up about 30 s.f. Beyond that, the uses would be office space and the wholesale sale of teapots and accessories. Roughly half would be office and some non-fixed shelving. He referenced a letter in the record from Kim McNamara, Health Inspector, who looked at the space and verified that the space would be suitable for the packing of tea with certain modifications.

Chairman LeBlanc indicated the Board had the letter, along with a letter of support from Portsmouth Community Radio. He asked if all deliveries would be via UPS trucks and Mr. Blakeslee indicated that or DHL as there is not much storage space.

Mr. MacCallum asked Ms. Tillman what the philosophical purpose of the ordinance was as it applied to this business.

Ms. Tillman stated that the area along Islington was originally zoned industrial but several people came in with business-type uses. In 1995, the zoning was changed to business use and, now because the buildings are unique older buildings, they lend themselves to a max of wholesale/office/retail. A business like Mr. Blakeslee's doesn't exactly fit into the business district, but fits in the building and area. It may be an area they will need to look at in the future.

Chairman LeBlanc asked what the house of operation would be and Mr. Blakeslee indicated Monday through Friday, approximately nine to five.

### **SPEAKING IN OPPOSITION TO THE PETITION AND SPEAKING TO, FOR, OR AGAINST THE PETITION**

With no one rising, the public hearing was closed.

### **DECISION OF THE BOARD**

Mr. Parrott moved that the petition be approved as presented and advertised, which was seconded by Mr. Marchewka.

Mr. Parrott stated that the nature of the buildings was originally light industrial and, through economic processes, this is no longer the case. This low impact small business would fit well into the building and area. Following the Simplex analysis, granting the variance would not impact the public interest as there will be no interaction with the public. No municipal resources will be expended. The nature of the building represents a special condition in the sense of what kinds of businesses it attracts. This would be a nice, clean operation which will not injure the public or private rights of others, he stated, and it is in the spirit of the ordinance to encourage new businesses in the city.

Mr. Marchewka agreed. This is a low impact use which falls in between the cracks of the zoning regulations but fits in well with the environment. As an industrial building in a business zone, abutting railroad tracks, the property is unique.

A motion to grant as presented and advertised was passed by a unanimous vote of 7 to 0.

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2) Petition of **Frank Perrone and John Giacalone, owners**, for property located off Falkland **Place and City of Portsmouth, owner** for property located off **Ranger Way** wherein the following are requested in conjunction with the construction of a building with 4 dwelling units and a building with 2 dwelling units on a combined lot: 1) a Variance from Article III, Section 10-301(A)(2) to allow two separate residential buildings on one lot where all dwelling units are required to be in one building, 2) a Variance from Article III, Section 10-303(A) to allow 3,254± sf of lot area per dwelling unit where 7,500 sf of lot area per dwelling unit is the minimum required, 3) a Variance from Article II, Section 10-207(13) to allow 6 dwelling units on a lot where the maximum allowed is 4 dwelling units; and, 4) a Variance from Article II, Section 10-211 to allow dwelling units on private property in a municipal district. Said property is shown on Assessor Plan 212 as Lots 26-1, 27, Alley No. 1 and Alley No.2 (all to be combined) and lie within the Mixed Residential Business and Municipal districts.

SPEAKING IN FAVOR OF THE PETITION

Attorney Pelech stated that the City Council had voted on three occasions to convey their portion of the property to the applicants doing business as Avanti Development. The applicants came before the Board of Adjustment in December of 2003 with a proposal which was denied. At the time, they received opposition from the residents of Atlantic heights who maintained that there was no parking and the design was not suitable for that neighborhood. In October of 2004, they filed another proposal with the same site plan as the current one, but without 11 parking spaces. He described a sequence of hearings before the Planning Board and the City Council culminating with the Planning Board again voting on June 16, 2005 to recommend to the City Council that the City property be sold and the Council accepting the recommendation on July 11, 2005 with stipulations and conditions.

One of the stipulations was that the zoning district classification be addressed. The ordinance indicates the property is classified General Residence A, but the zoning ordinance was amended during the last two years to reflect that any property owned by the City is zoned Municipal. The portion of the land that was owned by the City, Lot #27 on the plan, had been conveyed by the State after they relocated Ranger Way and built the high-level bridge.

Attorney Pelech stated the applicants are now coming before the Board for four variances. What is being proposed is to construct 6 residential dwelling units in typical Atlantic Heights brick façade buildings. Combining the two lots for a total of approximately 19,000 s.f. results in a lot area per dwelling unit of 3,254 s.f., which is larger than 76% of the lots in Atlantic Heights. He referred to an exhibit which displayed in color those lots having less than 3,254 s.f. per dwelling unit. The site plan before the Board now includes 11 parking spaces, which are being provided for the use of the general public and Atlantic Heights neighbors at no cost to the City.

Following the Simplex analysis for the first variance, Attorney Pelech stated that the special conditions of the property requiring a variance are its shape, the fact that there is a zone line as well as two alleyways running through the middle of the property, and the fact that part of it is owned by the City. All give this property a unique setting. They believe the zoning restriction interferes with the landowner's reasonable use. Originally when he applied in October, he believed half of the property was General Residence A and half was Mixed Residential Business. It was during the City Council process that it was discovered that the latter lot was now a Municipal Zone. He stated there are 19,000 s.f. in the combined lot and to allow the two Atlantic Heights style buildings is not contrary to the spirit and intent of the ordinance because there is still enough area to provide public access parking spaces for 11 cars in addition to their own 9 parking spaces.

Attorney Pelech maintained they are not crowding two buildings onto a sub-standard size lot. It is almost impossible with the lot configuration to sub-divide it so that there could be two units on one lot and four on another. Lot #27 and the alleyway come to a point and are triangular, which is very difficult to sub-divide. The lot configuration also makes it difficult to comply with a requirement for 7,500 s.f. of lot area per dwelling unit. He stated that values will not diminish by replacing an overgrown vacant lot with attractive structures and it is not contrary to the public interest to provide affordable housing, by putting the property back on the tax rolls, and adding parking.

For the second variance, Attorney Pelech stated that the 3,254 lot area per dwelling unit is more than 75% of neighboring lots have and more than they had previously proposed. He noted that Atlantic Heights has special treatment in the zoning ordinance. Following the Boccia analysis, he indicated that an area variance is needed given the special conditions of the property, which he had already stated. There is no other method to achieve the benefit as it is not economically feasible to build only the two dwelling units on the property which zoning would allow and a single, large residence would be out of character in that neighborhood. The remaining reasons for compliance are the same as he had stated for the first variance.

For the third variance, Attorney Pelech listed other properties with more units than allowed by the ordinance, stating that four units and two units are very prevalent and typical for Atlantic Heights. The reasons for compliance are the same as he had stated for the previous variances.

Attorney Pelech noted the need for a fourth variance would go away with the sale of Lot #27, the City owned land, to the applicants as the lot would then go back to General Residence A zoning.

In response to questions from Mr. Berg, Attorney Pelech indicated that Lot 26A was once part of Lot #26 containing a market and stores. Lot #27 was always #27 but had a 4-unit dwelling. Lots #26A and #27 were one lot on the original plat.

Mr. MacCallum stated he could go along with most of the arguments except the lot area per dwelling unit and felt Attorney Pelech seemed to say they should disregard the zoning ordinance and just do a neighborhood comparison. The Council would have taken the neighborhood into consideration when requiring 7,500 s.f. of lot area per dwelling unit.

Attorney Pelech stated that the 76% figure simply indicates that their proposal would be in harmony with what currently exists. He felt the Council had not really considered the neighborhood as they place this property in a Mixed Residential Business district rather than a General Residence A (he corrected the reference to General Residence B) district in which the rest of Atlantic Heights is zoned.

Mr. MacCallum stated that one of the purposes of the ordinance is to prevent overcrowding and that the applicants want 3,254 s.f. of lot area per dwelling unit when the requirement is double.

Mr. Pelech responded that, if that is so, 75% of Atlantic Heights is overcrowded, but he believes the residents like it and feel it is a close knit community. One of the reasons they can afford to live there is that the units are more affordable because the average lot area per dwelling unit is 2,500 s.f.

In response to a question from Chairman LeBlanc, Attorney Pelech stated that the architectural style was taken from the original plans for Atlantic Heights, although the dimensions may not be the same. The structures have a footprint of 30' x 22' which may be larger than the original Atlantic Heights structures.

Mr. Berg stated he had lived in Atlantic Heights and all units have a finished second floor and approximately 800 s.f. of space per dwelling unit. These have a finished third floor and about 1800 s.f. of floor area per dwelling unit.

Mr. Jousse noted there are 5 parking spaces on Falkland Place and wondered what the intent was regarding these spaces. Attorney Pelech indicated those spaces and two more are presently existing on the street and can't be included in their tally.

Mr. Parrott noted that the site plan doesn't give the dimensions of the yards, lot lines, four of the units, and the parking spaces. Attorney Pelech stated the parking spaces are all 9' x 19'. The structures meet the setback requirements from Falkland Way. The accessway and travel aisles are 24' on the nine-space parking lot.

Mr. Parrott stated that the items he mentioned are items required to be submitted by Board Rules and Regulations. Also not provided on the plans were the name(s) of owners and petitioners and the title of petition. Only one parking space is dimensioned. It's hard to match criteria because it doesn't meet the submission requirements.

Mr. Raymond Will stated he lives at 125 Preble Way and, while he is a member of the Planning Board and the Atlantic Heights Association, for the hearing he was only representing himself, a Portsmouth resident priced out of a house in Portsmouth,

ironically in Atlantic Heights. He is favor of the petition and is looking at this as an opportunity for the City to be involved in creating what he is calling naturally affordable housing. When Atlantic Heights was designed, all they had was the design of the house to make it affordable. The designer, Walter Kelm, supposedly designed the houses so that all the furnishings could be contained in a small truck, fearing that a higher square footage would force working class families out. To now build a Walter Kelm style house in the Heights, they would have to produce a certain level of design standards and that is what the developer has agreed to do as part of the criteria for the purchase of City land.

Mr. Will stated he disagrees with some of the design representations made by Attorney Pelech, but this is not the venue to discuss. His main point is the square footage. The places in the Heights are basement, attic, and 800 s.f. space in between. His fear is adding the third floor may price people out of their homes. He would agree with Mr. MacCallum's point about overcrowding if it were any other place in the City, but the Heights are designed for these types of buildings. His point of view is to ask the Board of Adjustment to approve these requests so that he might meet with Attorney Pelech on the Planning Board level when the design standards will come forward and there may be an opportunity to build some naturally affordable housing.

In response to a question from Mr. Berg, Mr. Will indicated he liked the basic proposal, but would like to discuss the details at the Planning Board.

When Mr. Parrott asked him to comment on the 11 public parking spaces, Mr. Will stated as an individual that, with the snow being piled higher, all spaces get used in the wintertime so they could use these new ones.

SPEAKING IN OPPOSITION TO THE PETITION

No one rose to speak.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Robin McIntosh stated she lives at 583 Kearsarge Way next to the property in question and wanted to address some of the questions that had been raised. The design of the proposed building is not taken directly from the original drawings – the scale is larger and they are being placed next to a one-story commercial building so we'll appear even larger. She had brought up the parking issue at the City Council meeting. The neighborhood had made a request several years ago to purchase that property looking for off-street parking and snow emergency parking. At the time they were turned down because the City didn't realize they owned property.

Mr. Joe Dasaro stated he is the owner of the commercial property next door. He questioned whether the price of the affordable housing would be a \$150,000 home or a \$300,000 home. His concern is that it may be approved based on affordable housing and then, when the project is done, it's not really affordable. He doesn't see affordable housing being constructed in brick.

With no one further speaking, the public hearing was closed.

DECISION OF THE BOARD

Mr. Jousse moved that all the variances be noted on at the same time and they be granted as presented and advertised. Mr. Witham seconded the motion.

Mr. Jousse stated that, from the lack of opposition, he felt there must be support because he remembered the tremendous amount of opposition that was raised two years ago. Atlantic Heights is a unique neighborhood and almost requires its own zoning ordinances. It would not be contrary to the public interest to add housing, hopefully low or middle income. There are special conditions in that over three-fourths of the dwellings in Atlantic Heights are less square footage per unit than what the applicant is seeking to build. Probably 80% of the dwellings in Atlantic Heights don't meet the zoning requirements.

Mr. Witham stated he agreed with the points in Attorney Pelech's presentation. This is the only Portsmouth neighborhood on the national register. Any type of development would want to mirror what exists to preserve its character and he believed the applicant had made an effort to do that. While he understands Mr. Will's concerns, at some point, economics must also be taken into account as well as affordability. The fourth variance will be moot once the applicant buys the property from the City.

Mr. Marchewka indicated he would support the motion. His struggle was with hardship but the zoning was inconsistent. This type of neighborhood should have an overlay that dictates greater density. He agreed with Mr. Will's comments regarding affordability and commented that the number of units could be a trade-off with parking provided for the neighborhood.

Mr. Berg stated that the fact that the property is in the shadow of the highway is going to create an affordable piece of property relative to what is out there, although they may be relatively expensive compared to 800 s.f. houses. He noted that Mr. MacCallum had raised concern about lot sizes. There are zoning requirements with the intent of bringing everything into conformance. The answer to why one would build something in such non-conformance is Atlantic Heights itself. While there is no overlay, there is acknowledgement in the ordinance that Atlantic Heights is different.

Mr. Parrott stated the concept was good, but the number of units a problem. He noted the presenter did not mention four units which the property could sustain and still give some elbow room. Outside of the downtown area, it's reasonable to expect a little bit of a yard. These yard dimensions are not scaled off because there's only about 10' before you hit paved area. He felt this was overintensification to maximize return, and there is nothing wrong with that, but it is not in the public interest.

A motion to grant as presented and advertised passed by a vote of 6 to 1, with Mr. Parrott voting against the motion.

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3) 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. Berg stepped down for this petition.

**SPEAKING FAVOR OF THE PETITION**

Attorney Pelech passed out an exhibit listing the square footage of the proposed signs but not indicating the content of the signs. He stated that Wal-Mart had received a variance for signage in April but 7 signs were eliminated and Wal-Mart had then requested a rehearing, which was granted. At the rehearing, the Board denied the variance for signage altogether. Another rehearing was requested and granted and that is why they were appearing that night.

He submitted additional exhibits showing the requested 365 s.f. in signage. Right now, they have 358 s.f. of approved attached signage and that evening were only seeking 7 more s.f. In addition, the former Jokers signage will be eliminated.

Attorney Pelech compared what they are requesting in signage for a structure which, at 190,000 s.f. is almost double the 100,000 s.f. of BJ's, with the 500 s.f. of signage BJ's has or the 900 s.f. of signage for Home Depot. Special conditions requiring additional signage are the location of the building some 800' off Lafayette Road and the building's wider size. Whether 300 s.f., the proposed 365 s.f. or the existing 358 s.f., the amount will not affect property values. He felt granting the variance would be within the spirit of the ordinance as the total aggregate signage on the lot is less than 500 s.f. and complies with the ordinance. The hardship on the owner is not outweighed by any benefit to the public.

In response to questions from Messrs. MacCallum, Witham and Chairman LeBlanc, Attorney Pelech stated that Jokers would be demolished and the area become part of the parking lot. They currently have 358.87 s.f. of attached signage which was granted in June of 1993 when the ordinance only allowed a maximum of 200 s.f.

**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 that the variance be granted in the amount equal to what they had in June 15 of this year, namely 358.87 s.f. of attached signage.

Mr. MacCallum asked if the motion could be clarified before his second.

Chairman LeBlanc stated they are currently asking for 365.95 s.f. Mr. Parrott has made a motion to grant them 358.87 s.f., which is what is on the building now and represents a bonus over the allowed amount in the ordinance, which is 300 s.f. attached.

Mr. Parrott agreed, adding that the amount in his motion will keep the total within 500 s.f. as well.

Chairman LeBlanc asked if that was his motion.

Mr. Parrott stated his motion was for the 358.87 of attached signage with the stipulation that the aggregate total would be under, or equal to, the 500 s.f. allowed by the ordinance.

Speaking to his motion, Mr. Parrott stated they had discussed this several times. His basic feeling is that 300 s.f. is adequate, but the argument can be made that, because the building sits back from the street, more square footage is reasonable and still be in the spirit of the ordinance. Following the Boccia analysis, he stated the signs will not be contrary to the public interest as they will be able to identify the services. There is not much of a substitute for signage to communicate services.

In seconding, Mr. MacCallum stated he voted in favor of the requests for rehearing. It is one thing to say that Wal-Mart did not have this much in the first place and another to take away what had already been given. He felt this amount was plenty and no more would be justified.

A motion to grant as amended and with the stipulation was passed by unanimous vote of 7 to 0.

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4) Petition of **Jean E. Putnam, owner** and **Patrick C. McFadden d/b/a Luxury Chauffeured, applicant** for property located at **160 Cass Street** wherein the following are requested: 1) a Variance from Article II, Section 10-207 to allow a limousine service with three vehicles and associated dispatch office in a district where such use is not allowed, and 2) a Variance from Article XII, Section 10-1201(A)(3)(a)(3)&(4) to allow the vehicles to park one behind another in the driveway and back out onto a city street. Said property is shown on Assessor Plan 146 as Lot 22 and lies within the Mixed Residential Business district.

SPEAKING IN FAVOR OF THE PETITION

Mr. Patrick McFadden stated that he had lived at this address since 1989 and was seeking a variance to run a car service. He passed out a list of signatures of neighbors supporting the request. He stated they have two town cars and this would be the same type of operation he was conducting before except that now he would own the vehicles. Drivers would come and pick up a vehicle and leave immediately. They value their neighbors and will conduct their business accordingly. They also felt the business would help the tax base.

In response to questions from the Board, Mr. MacFadden indicated he would be involved full-time. Cars would not be parked there for a considerable amount of time. They could be called any hour of the day and the better the business does, the less the vehicles would be parked there. He stated he would be operating long hours, but felt it would have no more impact on the neighborhood than anyone going out to the store.

Mr. Marchewka asked how many parking spaces there are on site and Mr. McFadden responded he can fit five vehicles in the driveway. Currently, they have two company vehicles and two personal vehicles. Mr. Berg asked if they would have any employees and Mr. McFadden responded there would be one who runs a sister company, but again with no more impact than a friend coming over and leaving his vehicle while the two go off in one car. He stated the average run time is 3 hours.

Mr. Jim Parker indicated he lives diagonally across from the property and indicated he doesn't see any impact on the neighborhood from the operation there now. He felt a dispatch center would be only the same as a home office and create no disturbance. For on-street parking, he felt a few extra cars might slow things down and make it safer.

Chairman LeBlanc asked if he was opposite the driveway and if backing out had presented any problem. Mr. Parker indicated there were only one or two problems since 1998, which were related to construction in the area.

Mr. Holloway asked Mr. McFadden what the number of vehicles was now and he responded they had two Lincoln cars and one conversion van. He had made a promise to the neighbors not to increase the numbers without moving or finding another place to store them.

Kim Bridge stated she lived at 127 Cass Street for twenty years and had no trouble with the request.

**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 made a motion that the petition be granted as presented and advertised, which was seconded by Mr. Witham for discussion.

Mr. Berg stated this is a low impact use which probably would not equal the impact of having neighboring teenagers coming and going. He didn't feel it was the intent of the zoning ordinance to stop the parking of cars and asked Ms. Tillman if the reason for a variance is because, theoretically, this is a commercial use.

Ms. Tillman responded, "yes."

Mr. Berg stated that the description of limousine service sounds like so much more than it is. If you own five vehicles, there is nothing to stop you from parking them in your driveway and he felt many people have jobs that require them to come and go.

Following the standards for granting a variance, Mr. Berg stated it would not be contrary to the public interest or diminish values and the neighborhood support had been demonstrated. He had explained how it was consistent with the spirit of the ordinance and felt that the issue of justice went along – it was just living life. He stated the restriction on the owner interferes with reasonable use. It is not reasonable to say that because he owns the cars, he must seek a variance. If there were more employees coming and going, it would be different. The departmental memorandum expressed concern about the coming and going at odd hours, but the neighbors have said they are o.k. with this. For the same reason, granting the variance would not injure the public or private rights of others.

Mr. Witham stated he had seconded for discussion only, but could not support the petition. He supports small businesses, but he didn't think this was the place for this type of operation. He travels down Cass Street on his way to work and has seen what he would call limousines parked there and they seemed out of place in the neighborhood and a possible traffic hazard. He indicated they had photographs showing how the vehicles fit in the yard but to him, it looks like a sardine can and they have to back out into the street. He felt it was not in keeping with a residential neighborhood to cram the driveway with more cars than most people have and it was forcing something on this property that doesn't fit. The applicant did state that, if he grows, he would find a suitable location off-site and maybe this is the time. Even though the area is zoned Mixed Residential Business, this stretch is mostly residential, but when you drive by this property, it seems to be a business.

Mr. Parrott stated he agreed with Mr. Witham. He reminded the Board that the variance runs with the land and another owner could buy and pave the back yard and line the street with cards. He is in favor of people using abilities to be entrepreneurs, but the neighborhood is entitled to retain its almost exclusively residential nature.

Mr. Jousse stated he also would not support the motion. The next owner might not be so diligent as to have the vehicles back into the driveway and exit front-first onto the street. Backing into the street would present a hazard.

Mr. Marchewka asked if the maker of the motion would consider a stipulation that might limit what the applicant is trying to do and what could be done in the future.

Mr. Berg stated he did not understand the concerns about passing to the next owner because they grant as presented and advertised which would be three vehicles with parking in the driveway, one behind the other. That should address future concerns.

Chairman LeBlanc stated that he didn't believe the variance mentioned three vehicles only.

Mr. Berg maintained it did and, as he read the ordinance, if someone wanted to pave behind and park there, that would require another variance.

A motion to grant as advertised and presented failed by a vote of 3 to 4. Messrs. Holloway, Jousse, Parrott and Witham voted against the motion.

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5) Petition of **Bruce Campbell, owner**, for property located at **245-249 Lincoln Avenue** wherein a Variance from Article IV, Section 10-402(B) is requested to allow an existing hip roof on the detached garage to be replaced with a gable roof creating a building height of 14' and changing the required setbacks to: a) a 5'± rear yard where 10.5' is the minimum required and b) a 6'± right side yard where 10.5' is the minimum required. Said property is shown on Assessor Plan 130 as Lot 46 and lies within the General Residence A district.

**SPEAKING IN FAVOR OF THE PETITON**

Mr. Bruce Campbell stated he owns the property at 249 Lincoln Avenue. Behind the house, there is a detached garage with a hip roof which needs extensive repair. The way the hip roof is designed without a joist adds pressure to the walls below. He wants to put a gable style roof on it with four sides instead of just two. The garage is one the property line which is why he is appearing before the Board. Mr. Campbell stated there are many lot sin Portsmouth where the garage has a gable roof and is on the property line. He feels it fits into the area and will not diminish the value of surrounding properties.

Chairman LeBlanc asked if the footprint would be change din any way and Mr. Campbell responded, "no."

Mr. Jousse asked if the garage was structurally sound enough to hold up the new roof and Mr. Campbell responded that the garage is cinderblock construction and there would now be a deck of the same material under the roof, on which the roof framing would sit. Right now, the roof framing sits right on to of the cinder blocks that serve as the outside walls. With a gable roof, there are joists on the deck and the pressure disperses along the joists.

Mr. MacCallum asked Ms. Tillman if the Planning Department recommended any stipulations. Ms. Tillman stated it should just remain as an accessory building for accessory storage and a garage.

When Mr. Parrott noted that there are garage doors on two sides, Mr. Campbell indicated he would like to retain them.

Mr. Parrott asked if raising the ridge 7'4" is what made the variance necessary and Mr. Campbell responded he believed so.

**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 grant as presented and advertised, with the stipulation that the building remain an accessory building for storage and a garage with no water service. Mr. Berg seconded the motion.

Mr. Parrott stated that the proposed roof will look better and be more structurally sound. The height of the structure is still within the ordinance and the footprint is identical. Although the garage is on the property line, the additional 7' is not objectionable. He didn't believe there was any public interest involved as the structure sits in back adjacent to similar lots. Special conditions resulting in a hardship are that, if the garage is left as it is, it's going to fall down and the location on the property line can't be changed. The only other method available would be to replace in kind, but the gable roof design is better structurally and visually. The stipulation will ensure that the gable roof will not be used to turn the structure into a use other than garage or storage. It is in the spirit of the ordinance to improve the property without infringing on the neighbors and the value of surrounding properties may be improved.

In seconding, Mr. Berg stated he agreed with Mr. Parrott and had nothing to add.

A motion to grant with the stipulation passed by a unanimous vote of 7 to 0.

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III. ADJOURNMENT

The motion was made, seconded and passed to adjourn the meeting at 9:35 p.m.

Respectfully submitted,

Mary E. Koepenick
Secretary