

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

7:00 p.m.

CITY COUNCIL CHAMBERS

September 27, 2005

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

MEMBERS EXCUSED: None

ALSO PRESENT: Lucy Tillman

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

I. OLD BUSINESS

A) Approval of Minutes:

December 28, 2004
May 17, 2005
May 24, 2005

July 19, 2005
August 16, 2005

A motion to approve the Minutes with a minor correction to the May 17, 2005 Minutes was made, seconded and passed by unanimous vote of 7 to 0.

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B) Request for Rehearing on Petition of **Murat and Sandra Ergin, owners**, for property located at **251 Walker Bungalow Road**.

Mr. Witham stepped down for this discussion and vote.

**DECISION OF THE BOARD**

Mr. MacCallum moved that the Request for Rehearing be denied, which was seconded by Mr. Parrott.

Mr. MacCallum stated that an applicant may come up with new information, but what also needs to be considered is if there was a fair opportunity to present the information initially. The applicant has brought up something new, but this is information that could have been presented the first time around. Secondly, he didn't believe the new information would change his vote or that of others. The desire to build a front porch is not a hardship.

Mr. Parrott, in seconding, stated he had nothing to add.

Mr. Berg stated he would not support the motion. There was discussion at the first hearing regarding there being no hardship because a side porch could be built. He felt the applicant had brought up some valid points as to why a side porch could not be built. He agreed with the attorney’s explanation that those issues came up during the discussion of the Board, not the public hearing. He felt the Board should hear the testimony regarding easements and why a side porch could not be built and then make a decision.

Chairman LeBlanc stated he would support the motion. The information was readily available to the applicant but they didn’t bring forward at the meeting.

A motion to deny the request passed by a vote of 5 to 2, with Messrs. Berg and Marchewka voting against the motion.

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II. PUBLIC HEARINGS

Chairman LeBlanc announced that he would like to take the following two items out of sequence. They were requested to be tabled, item 7) at the request of the applicant and item 8) so that all abutters could be notified.

7) Petition of **Portsmouth Farms LLC, owner, Starbucks Coffee Co., applicant**, for property located at **1855 Woodbury Avenue** wherein the following are requested: 1) a Variance from Article XII, Section 10-1204 Table 15 to allow 28 parking spaces to be provided where 34 parking spaces are required, and 2) a Variance from Article XII, Section 10-1201(A)(3)(e)(2) to allow parking spaces and travels aisles within 40’ of the front property line. Said property is shown on Assessor Plan 215 as Lot 11 and lies within the General Business district.

A motion to table the petition to a time indefinite passed by a unanimous vote of 7 to 0.

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8) Petition of **Patricia A. Card Living Trust, owner, and Joseph Lavin, applicant**, for property located at **off Islington Street** wherein a Variance from Article III, Section 10-302(A) is requested to construct a 24’ x 36’ two story single family dwelling with basement on a lot having an area of 6,610± sf where 15,000 sf is the minimum required. Said property is shown on Assessor Plan 233 as Lot 2 and lies within the Single Residence B district.

A motion to table the petition to the October 18, 2005 meeting passed by unanimous vote of 7 to 0.

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6) Petition of **Paul J. and D. L. Holloway, owners**, for property located **off the Route One ByPass** and **Paul J. Holloway, owner** for property located **off Cottage Street** wherein the following are requested: 1) a Variance from Article II, Section 10-206 to allow a new driveway and 18 customer parking spaces for an associated automobile dealership on a lot zoned residential where such use is not allowed, and 2) a Variance from Article II, Section 10-209(13)(a)&(b) to allow 13 new motor vehicle display spaces on an industrially zoned parcel within 500’ of property zoned residential and within 50’

of the front and side lot lines of an industrially zoned parcel. Said property is shown on Assessor Plan 173 as Lots 9 & 11 and lie within the Industrial and General Residence A districts.

Mr. Berg stated that his friend had been hired on as an appraiser on another matter by the applicant's attorney. He stated that, if anyone felt he should recuse himself, he would step down. Chairman LeBlanc asked if anyone had any objection to Mr. Berg sitting for the petition with no objection raised.

Ms. Tillman stated a reference was made in the departmental memorandum to a petition that had been granted with stipulations, which had not been listed. She provided the letter of decision from the January, 2000 decision, which included the stipulations, to the Board, Attorney Griffin and the abutter who would be appearing.

SPEAKING IN FAVOR OF THE PETITION

Attorney Griffin outlined the ownership of the lots and the changes they were proposing. Noting that the owners have a history of civic duty, he stated the request arises from a desire to improve traffic safety by relocating the entranceway making it safer to enter and exit the dealership. Attorney Griffin related the problems associated with the current location of the driveway and the traffic to and from Cottage Street, particularly when the flatbed delivery trucks get caught on the crown of the roadway. They then unload in place, causing a number of traffic and safety problems.

To provide for the unloading of delivery vans on the dealership lot and not Cottage Street, the applicants would relocate and add parking and display spaces for a net increase of 6 parking spaces and 7 display spaces. In January of 2000, Attorney Griffin stated, the Board granted a variance to allow a new driveway and 7 new parking spaces, but denied 9 new display spaces within 200' of residentially zoned property. This variance expired as the applicant did not proceed through the site review process.

Attorney Griffin outlined the reasons why they felt the request for a new driveway and parking spaces met the standards of the Simplex analysis, referring to a report in the packet of information from Horizon Associates concluding that the changes would not result in a diminished value of the surrounding properties. He noted the new driveway would be approximately 230' from the closest property which is not owned by Mr. Holloway.

He continued that the driveway relocation would not be contrary to the public interest as it would significantly increase safety, complying with national and state standards, and allow unloaded vans to return to the Bypass by a safer route. In order to allow sufficient room for the delivery vans, 12 parking spaces have to be taken away and relocated. The 6 additional spaces are needed because the dealership now services up to 50 vehicles a day. Previously, one criticism was that vehicles had to back out into driveway, which is not now the case. The proposal was reviewed in August by the Traffic Safety Committee who recommended approval of the driveway relocation with the stipulation that a 6' wide opening for drainage be reduced to 4' and an appropriate barrier be placed on the corner where 6 vehicle display spaces are being removed. The applicants are agreeable to the stipulations.

With traffic and safety improved, and arbor vitae screening along Cottage Street and the driveway, the view from the residences will be buffered, which will be in the spirit of the ordinance. Attorney Griffin stated that the property is in a unique setting abutted on two sides by an Industrial zone and on

one by a Municipal zone and lying at the end of a General Residence A zone so that the zoning restriction interferes with this reasonable use of the property and denying would result in a hardship. There is no relationship between the intent of ordinance and the zoning restriction. There is no loss of light and air or danger to the health and safety of public. Installation of screening will buffer this driveway and parking lot from neighbors. With all the items mentioned, there would be no injury to the public and private rights of others, nor would the essential character of neighborhood be changed.

Under the Boccia analysis for the variances to Article II, Section 10-209-13(a)&(b), Attorney Griffin stated that there will be no diminution in value. Currently there are 71 vehicle display spaces, none of which are screened. 6 spaces on Cottage Street facing residential properties will be relocated to the area of the existing driveway and there is only a net increase of 7 display spaces. He pointed out a correction to Note 12 of the plan. The existing number of display spaces is 178, not 186 and the proposed number is 185, not 181. He again cited the report of Horizon Associates that, with the screening, the value of residential properties would not be diminished.

Attorney Griffin stated that realigning the display spaces would improve visibility and be in the public interest. It would not violate the intent of the ordinance as no hazards or overcrowding would result. Given the size and configuration of the lot, the location of the existing display spaces and the existing building, the variance from the 500' setback is needed for this proposed use. The property already has 178 spaces within 500' of a residential zone but has been used for this purpose since 1962 pre-dating the ordinance. For the front setback, 6 spaces with no setback will be removed and replaced with spaces 27' and 32.5' respectively. There is no other place to put the spaces and comply with the ordinance.

For both sets of variances, justice will be done by a decrease of traffic congestion in the neighborhood and appropriate screening. The applicant is agreeable to a stipulation to combine the lots as recommended in the Department Memorandum, and also to the stipulations that were attached to the variance granted in January of 2000, which he specified. In conclusion, Attorney Griffin stated that his presentation may have differed in a few respects from the memorandum included with his exhibits, so he was submitting a copy of the presentation he just made.

Mr. Berg asked for clarification on the plan showing the parking and display spaces.

Mr. Connolly, of Civilworks indicated that adjacent to the bypass, there are 17 spaces to remain and 6 spaces slated to be removed as part of the proposal. The second row back shows 16 spaces which are the 14 existing and the 2 to be added, as shown in pink and including the word, "see." The row behind that shows a total of 17 spaces, 15 current and 2 to be added. The 2 + 2, or 4 to be added, plus the additional 9 equals the 13 spaces set forth in the variance. He added that Attorney Griffin states it is an actual net 7 spaces when the 6 to be removed are deducted.

In response to an additional question from Mr. Berg, Mr. Connolly confirmed that everything shaded in pink is what is being added and the rest of the indicated spaces currently exist.

Responding to a question from Mr. MacCallum, Attorney Griffin further clarified that the spaces added will be 7 display, for a proposed total of 185, and 6 vehicle spaces, for a total of 52. He referenced note 12 in his packet and stated it would be a net of 7 vehicle and 6 customer service.

Mr. MacCallum if the applicant had once owned the lot for which he is seeking a variance and the neighboring lot as one parcel, if the former (lot) was broken off and how long the applicant had owned the combined lot. Attorney Griffin confirmed that the lot was subdivided in May of 2001 and the applicant had owned, he believed, since the late 1990's.

Mr. MacCallum stated that the client owned the next parcel down and now has three residential properties and his concern is that they are going to be coming back in a year or two to make the lots commercial.

Attorney Griffin replied, "no" and, after conferring with his client, added that the next residential property down the line had been owned by him since the early 1980's.

Mr. Parrott asked if the parking spots were dimensioned to legal requirements of 8-1/2' x 19' and Mr. Connolly responded they were 8-1/2' x 18'. His second question referred to the memorandum in support of the applicant's petition where the problem of delivery trucks getting caught on the crown was mentioned and he asked how the requested changes would change the crown of the road.

Attorney Griffin stated that in his recollection the crown might not be as high in the proposed new driveway location.

Mr. Joseph Yergeau, of Coast Cadillac, explained that if you caught the crown just right, there was no problem. If the trucks are facing out, the drivers can angle it. The angle is different for the ones backing up. There's not enough swing and the trucks get hung up. He believes the new arrangement will solve the problem.

Mr. Parrott asked if they were agreeable to a stipulation that, if the trucks do not fit, they would make some other modification to the driveway as one of the main justifications for the variance request was to get the trucks off the road. Mr. Yergeau stated that they would have Mr. Connolly look at it – that would not be a problem.

Chairman LeBlanc stated he didn't want to see the arbor vitae placed on the property with the wood frame dwelling, but on the commercially-used property. By putting screening trees on the residential property they are, in effect, making it a commercial use property.

Mr. Connolly stated that could be effected slightly to the west but they would lose approximately 4' in elevation. The site plan shows the creation of a berm on the adjoining house lot, Map 173, Lot 8. They have the ability there to build a berm and put trees on top. They can move, but will lose height.

After brief consideration of moving the berm and adding a retaining, Chairman LeBlanc stated he would be happy if the trees were moved over to the commercial lot and Attorney Griffin represented that they could do that.

Chairman LeBlanc asked about the property values of the lots owned by Mr. Holloway that were still residential and Mr. Vern Gardner, the appraiser replied that he hadn't been asked to address the issue so could not give an opinion.

SPEAKING IN OPPOSITION TO THE PETITION

Attorney McEachern stated he has lived at 81 Cottage Street for ten years and his parents back to 1892. He is appearing as an individual and wanted to address a number of points, the first of which is that the variance granted in 2000 did not allow for parking on a residential lot. He provided a copy of a site plan which he believed the applicant had presented in 2000, which fact was disputed by Attorney Griffin. He stated that what the plan shows is that there is a parking area on the proposed driveway and, at the Board of Adjustment hearing there was a stipulation that there be no parking on the driveway. The effect was to eliminate the parking on that residential lot. He presented a copy of the site plan presented to the Planning Department for Site Review, which was stamped "Received Dec. 11, 2000." Attorney McEachern read a notation on the plan stating that a variance to allow a new driveway had been granted on January 18, 2000 with, as one of the stipulation, "that there be no parking on the proposed new driveway." As indicated on the plan, there was no parking shown on the residential lot and this is the plan that the applicant submitted to Site Review. If approval had been received to put 7 parking spaces on the residential lot, they would have been shown on the plan, but they were not. Also, in 1999, the applicant put in a request for a change to rezone all the residential lots he owned on Cottage Street to General Business and again in 2003. The City's Master Plan commented on this and recommended no zoning change due to the anticipated changes in traffic flow from the Route One Bypass reconstruction. He spoke the past week with a member of the Bypass Committee who informed him there are now two alternatives for the configuration at Portsmouth Traffic Circle, both of which call for the elimination of the traffic signal intersection at the Route One Bypass and Cottage Street. What is being proposed is a right-hand only situation so, going north on Route One Bypass, you can a right turn onto Cottage Street but you cannot take a left coming off Cottage Street.

Mr. McEachern outlined his objection to the proposed variances, stating it was in the public interest to create opportunities for residential lots. This is a buildable lot and, because it is bounded on two sides by a car dealership, it would definitely be affordable housing. The applicant has failed to establish any hardship except a self inflicted one which is economic in nature – moving the driveway will cause harm to his business unless there is also a variance to add parking on an adjacent lot.

In 2000, the Board approved a variance to move the driveway, with stipulations. Now, 5 years later, the applicant never acted on the variance but is back to request moving the driveway but adding 18 spaces instead of 7. Attorney McEachern stated he doesn't believe this is about the driveway, but about the parking. The applicant is voicing safety concerns but had the opportunity to move the driveway years ago and did not do so because of parking. Traffic patterns are going to change in the area and there will not longer be a queue of traffic at this intersection waiting for the light. He asked that the parking on a residential lot be denied.

There was some discussion between Mr. MacCallum and Attorney McEachern on the requests for rezoning in 2000 and 2003 and which lots were involved in the requests.

In response to a question from Chairman LeBlanc, Attorney McEachern stated he is not opposed to the idea of moving the driveway, but reiterated he doesn't think it is about the driveway, but expanding the

parking. He doesn't know how much safer it would be. One of the recommendations the Bypass Committee is going to be looking at is putting in a City street light opposite where the current entrance is and an access road up to Bickfords. What he doesn't want to see is business uses starting to come up the street. He outlined more background from 1999 with expansion of parking into the residential lots and reiterated that his concern, from day one, has been expansion.

Chairman LeBlanc stated they have to deal with current conditions – the intersection and traffic as it is now.

Mr. Berg stated there is a visual barrier on both sides of the driveway that would make the parking less visible to him than now and asked what his objection was if he can't see it.

Attorney McEachern responded that one objection is losing a residential lot that would support affordable housing. His concern is encroachment, which starts with parking. Dealerships like to expand. If they put an 18 car parking area on this lot, they have converted it to business and it's lost for a residential use.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Attorney Griffin addressed the representation that on the site plan submitted in 2000, there was never any plan for parking on this lot. He referred to the letter of decision for the January 18, 2000 Board of Adjustment meeting wherein a variance was requested "to allow a new driveway and 7 new parking spaces..." The letter states the variance was granted. He submitted Attorney Loughlin's site plan which shows employee and visitor parking backing out into the driveway which is why the Board probably added some stipulations.

Secondly, as far as rezoning is concerned, those considering the Master Plan asked for input on properties they thought might be suitable for rezoning. Coast did that, but did not go any farther. He stated there is obviously a huge difference between a variance and rezoning. With a variance, the property remains zoned residential and its use is limited to those purposes. With a rezoning to General Business, you could have any number of commercial uses. He stated that people should not be penalized for simply providing input to the Master Plan.

Attorney Griffin mentioned several instances of actions he believes Attorney McEachern favors that are not in keeping with his stated concern about changing the residential nature of the neighborhood. As far as the Route One Bypass Committee is concerned, they are in a study phase and what they will do is unknown.

With regard to the applicants purchasing other houses, they have purchased some, but sold others, one at Cate and Cottage Streets and another the closest non-residential house. If they were interested in amassing an empire, they would not have sold any of them. Lastly, this is a vacant lot which distinguishes it from those containing houses. On balance, there was a proposal for parking on this lot which was approved by this Board in 2000.

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

DECISION OF THE BOARD

Mr. MacCallum made a motion to deny the petition which was seconded by Mr. Parrott. He stated that this is a case of a property owner that wants to use a piece of residential property for a commercial use. This is at least the third time an automobile dealership has come before the Board to encroach in one way or another on residential property or a buffer. The applicant in this case is asking to cut the buffer in half, although some of the properties belong to him. There is no reason this property can't be developed for residential use. He stated that safety is commendable, but if the applicants' concern was safety, there was nothing stopping them for five years. The variance is for a net increase of 13 parking spaces, 7 display and the rest customer parking. He believes the lot is residential and it is against the spirit of the ordinance to use for a car dealership. Mr. MacCallum cited Bacon vs. Enfield and his concern for domino development. In that decision, mere convenience is not grounds for a variance.

Mr. Parrott stated he concurred. He didn't see anything unique in the property and to encroach at the edge of a zone is a dangerous precedent to set. Hardship is supposed to be inherent in the land and he didn't see any. By using for commercial property, they will change the use of the lot and the standards for change of use have not been met. With respect to a hardship on the owner, they were told a dealership has thrived there for 40 years and it is not necessary to extend that. As opposed to land, dealership thriving there for 40 years as have been told – not necessary to extend that.

Mr. Berg asked the makers of the motion if they split into three separate pieces and spoke to the driveway alone and the 18 spaces and 13 spaces alone, would it change their opinion.

Mr. MacCallum stated it would move him slightly but they would still have commercial creep and piecemeal development. He attaches significance to the fact that Mr Holloway and his family are buying other properties. It's an easy step to a conclusion that the buying is to expand business.

Mr. Berg stated he would not support the motion as the public benefit of altered access offsets any negative of 18 parking spaces. He might have felt differently if the maker of the motion had agreed to divide into component parts.

Mr. Marchewka stated he had been on the fence. If it was really about the driveway, the applicants would have changed it so he believes it is clearly about the parking which was denied twice. He will support the motion to deny.

Chairman LeBlanc stated he thought it was a good proposal and he would not support the motion. Traffic and safety are a crucial issue in that area.

The motion to deny the petition failed by a vote of 3 to 4, with Messrs Berg, Holloway, LeBlanc and Witham voting against the motion.

Mr. Berg made a motion to grant as presented and advertised, which was seconded by Mr. Holloway.

Chairman LeBlanc stated that he would like a stipulation to move the arbor vitae onto the driveway lot and to require barriers in front of the dealership to prevent access to the Route One Bypass and asked if it was acceptable to the makers of the motion

Messrs. Berg and Holloway agreed to accept the stipulations.

Mr. Parrott wanted to add more stipulations. If the new driveway does not solve the truck problem, Coast will fix it themselves. Also, Cottage Street cannot be used for loading and unloading.

Chairman LeBlanc listed the stipulations as follows:

- That the arborvitae screening will be moved from lot #8 to lot #11.
- That barriers will be placed along the front property line of the dealership so that no access to Route One By-Pass can be made from the lot. The type of barriers will be determined by the Site Review Committee.
- That, if the driveway relocation does not solve the problem of vehicle carriers not being able to freely enter onto and exit the dealership from Cottage Street, the applicants will reconstruct and redesign the driveway, at their expense, so the problem is solved.
- That Cottage Street will not be used for loading or unloading vehicle carriers for the dealership.

The makers of the motion agreed to this.

Mr. MacCallum seconded that for discussion. He does not agree with stipulation 5. He doesn't think that it is enforceable. He is talking about imposing a restriction a parcel of property. He would like to see it happen, but doesn't see how it can.

Mr. Marchewka reminded the Board that there was no stipulation on parking. He reminded the Board that they denied the parking in 1999 and 2000, and now they are back granting more parking than was previously granted.

Mr. Berg echoed Mr. MacCallum regarding infringing on property rights. He is not saying that he is in favor of commercial use of the properties, but to say to the owner what he can and cannot do is not right.

Mr. Witham stated that Mr. Parrott's intentions are well taken. This is a double restriction because the rules as they stand now state that they cannot be used for a commercial use.

Mr. Holloway stated that he is in opposition to this.

The motion to attach stipulation 5 failed by a vote of 5 to 2.

Mr. Marchewka asked if the maker of the motion would agree to separate parking out on the residential lot.

Mr. Berg stated that he is not willing to separate the parking out. He stated that there was a traffic problem on Cottage Street. It is too close to a major roadway. The business necessitates parking on Cottage Street. It is in the public interest to move the driveway away from the street. The residential

district is unusually shaped. Zoning boundaries should be based on prudent practices. When you look at the zoning map, traffic from Route 1 pushes things up Cottage Street a bit. They have to be mindful of the significance of the road, such as a bypass.

Mr. Berg stated that they have an opinion from an appraiser saying that it was not adverse to the surrounding properties. They can mediate this by a visual barrier, which the applicant is doing. Special conditions exist such as the irregular shape of the zoning district. This is not contrary to the public interest. They are not putting a commercial use here – it is just for parking. Substantial justice is done, and is consistent with the spirit of the ordinance. This does allow the owner of the business to be a safer neighbor, and stop generating hazards. The pink parking spaces are within 500’ of property zoned residential, but there is preexisting parking on all sides. This is a General Business use on an Industrial lot. The request to relocate the parking is necessitated by moving the driveway. That is a reasonable request. This is a residential parcel, surrounded on three sides by nonresidential uses, which makes it unusual. They are not looking for a commercial use, they are just parking cars. This will not injure the public or private rights. The visual impact is being buffered.

Mr. Holloway stated that he had nothing to add.

Mr. Witham stated that he struggled with this one. He has previously voted against car dealerships. He tried to determine if they were infiltrating zones or eroding edges. They have a finger of residential districts that stick into a municipal zone. This is different than eroding the edges. This will not alter the character of the neighborhood. The public benefit is creating a much safer situation on the street. It is reasonable to allow 13 spaces on the property. This will not change things that much. If they were tearing down a house then he might feel differently. Denying this results in unnecessary hardship.

Mr. MacCallum stated that if this is a residential area that is infiltrating a commercial zone, this is because there are previously granted variances. The zoning ordinance is supposed to be the rule, and variances the exception. They are supposed to limit nonconforming uses, not expand them.

The motion to grant the petition, with the stipulations, was passed by a vote of 4 to 3.

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9) Petition of **Paul Lane, owner**, for property located at **428 Hanover Street** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) are requested to allow the reconstruction of two 3’ x 6’ bump outs on the front of the building with a 3’6” x 21’ 6” roof over said bump outs and front door with a 1’± front yard for all where 5’ is the minimum required. Said property is shown on Assessor Plan 138 as Lot 7 and lies within the Apartment district.

**SPEAKING IN FAVOR OF THE PETITION**

Mr. Paul Lane, owner, stated that he has a picture to submit for visual reference. He has a copy of the plan. He requests three individual roof systems, all seriously deteriorated presently. He would like to have one continuous roof over all.

Chairman LeBlanc asked why they needed to do this so close.

Mr. Lane stated that the existing structure is that close. They would like to connect the space between the front door and side areas. The roof systems are flat. As it is now, they are a water hazard that contributes to the roof rot.

Chairman LeBlanc asked if they were going to go forward on anything else besides the roofs.

Mr. Lane stated that was correct.

Mr. MacCallum asked if he was aware that the Planning Department recommended that the roof be built in such a way that the rain goes off to the side. Did he have any problems with that?

Mr. Lane stated that he was not. He doesn't see how he was going to be adding any water to the sidewalk. He is not opposed to doing what the Planning Department requests.

Chairman LeBlanc asked if he would have a gutter that would run back onto the property. The pictures show that the supports are almost nonexistent. Are they going to be replaced?

Mr. Lane stated that they would be replaced with sono tubes.

Mr. Jay Denette, neighbor, stated that he supported the variance. Any improvement to the neighborhood is welcome.

Mr. Parrott asked Lucy Tillman if she knew where the HDC lines were in the area.

Ms. Tillman stated that they were down Islington Street, only one lot deep.

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

### **DECISION OF THE BOARD**

Mr. Witham made a motion to grant the petition as presented and advertised, which was seconded by Mr. Parrott.

Mr. Witham stated that this proposal was essentially replacement in kind. They would be replacing the roof and redirecting the water to prevent flooding. One stipulation is that there must be gutters on three sides with the downspout on the owner's property and away from the sidewalks. It would not be contrary to the public interest. Special conditions exist, such as the fact that everything where it is now predates zoning up to the extension in the property line. There is no reason to replace something in kind, and he doesn't see this going against the general purpose of the ordinance in any way. They cannot achieve this same benefit in another way. They cannot replace the roof without a variance and the reason for the request is to provide shelter. It is consistent with the spirit and intent of the ordinance and there is no reason to believe there would be a diminution in value of the surrounding properties.

Mr. Parrott stated that he agreed.

Chairman LeBlanc added the stipulation:

- That gutters will be installed on three sides, with a downspout directing rainwater onto the owner's property and away from the City sidewalk.

The motion to grant the petition with the stipulation was passed by unanimous vote.

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10) Petition of **CLJR, LLC, owner**, for property located at **6 Robert Avenue** wherein a Variance from Article II, Section 10-208 is requested to allow a wholesale /retail irrigation business with a 30' x 35' outdoor storage area in a district where such use is not allowed. Said property is shown on Assessor Plan 286 as Lot 17 and lies within the General Business district.

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernard Pelech stated that he was there on behalf of Mr. Ricci, Jr. This applicant's business is located directly across from John Deere. The Board granted a variance to John Deere at their present location. They also granted a variance for this location and to allow building on the lot. The Board granted 4,000 sf of that building be used for warehouse in 2000. This is unique to the general business zone because they have no frontage on Lafayette Road. They are also encumbered by substantial wetlands. They are not suited to typical business uses. The retail tenants of these lots have not been successful because there is no visibility. It is difficult to find typical general business tenants because they are not suited for it. Likewise, the property across the street suffers from the same problems. They would like to relocate directly across the street. John Deere landscaping is a wholesale retail irrigation business that deals with plastic pipes and sprinkler heads sold primarily on a wholesale basis to landscapers.

Attorney Pelech stated that a use variance is required. This would not be contrary to the public interest. The business would be moving to a more suitable location. The outdoor storage is going to be in a fenced area behind the building, which would not be visible from Robert Ave or Route 1. Obviously, the Board found this lot unique enough by allowing that building to be built. This is a low intensity use and can function on the property well. There is no injury to public or private rights. The contractors come and go often, but the general public only has 15 spaces. It is not contrary to the spirit of the ordinance. It prevents large types of wholesale uses, and this is a small area with low intensity. This is not a large retail component. Substantial justice will be done by granting this. The hardship on the owner is not outweighed by any benefits to the public. Surrounding property values would not be diminished.

Mr. Holloway asked if there were any objections to the fenced in outdoor storage.

Attorney Pelech stated that it would be fenced in by a chain link fence.

Chairman LeBlanc asked if it would be the same size as across the street.

Attorney Pelech stated that it would actually be less. It would be more secure and on hardtop.

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

DECISION OF THE BOARD

Mr. Marchewka made a motion to grant the petition as presented and advertised, which was seconded by Mr. Parrott.

Mr. Marchewka stated that this is a case where the proposal is very well suited to the business. There is a disconnect between the zoning requirements and this type of business. It is a reasonable use. It is not contrary to the public interest and will have really no effect. Special conditions exist such as the zoning restriction which interferes with the reasonable use of the property. It is zoned for greater business use but this property is off the beaten path. It is more in a warehouse industrial location, so it is a gray area. The restrictions on the property were just covered. It will not injure the public or private rights of others, because no one will be affected by this. It is consistent with the spirit and intent of the ordinance and will have no detrimental effect on surrounding properties. Substantial justice is done by allowing the business to operate as it has done successfully across the street. Allowing the property owner to utilize the property in a manner consistent with the general purpose of the zoning laws is justice. Surrounding properties will not be affected.

Mr. Parrott agreed with Mr. Marchkewa

The motion to grant the petition was passed by unanimous vote.

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**III. ADJOURNMENT**

The motion was made, seconded and passed to adjourn the meeting at 9:45 p.m.

Respectfully submitted,

Danielle Auger  
Acting BOA Secretary