

**MINUTES OF THE BOARD OF ADJUSTMENT MEETING
PORTSMOUTH, NEW HAMPSHIRE
MUNICIPAL COMPLEX, 1 JUNKINS AVENUE**

EILEEN DONDERO FOLEY COUNCIL CHAMBERS

7:00 p.m.

March 20, 2007

MEMBERS PRESENT: Chairman Charles LeBlanc, Vice Chairman David Witham, Carol Eaton, Alain Jousse, Charles LeMay, Arthur Parrott, Henry Sanders, Alternate: Thomas Grasso

EXCUSED: None

ALSO PRESENT: Lucy Tillman, Chief Planner

I. OLD BUSINESS

A) Approval of Minutes – February 20, 2007

Chairman LeBlanc noted that his copy of the draft Minutes had not been received in the mail.

It was moved, seconded and passed by unanimous voice vote to postpone approval of the Minutes to the next meeting.

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B) Applicant filed Motion for Rehearing regarding property at **7 Islington Street**.

Mr. Witham made a motion to deny the Motion for Rehearing, which was seconded by Mr. Jousse.

Mr. Witham stated that he didn't think the Board had erred in making their decision.

Mr. Jousse added that the bases for a rehearing would be if new information had been presented that was not available at the time of the initial hearing or if the Board had not followed procedures. Neither of these had occurred.

The motion to deny the Motion for Rehearing was passed by unanimous vote of 7 to 0.

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C) Petition of **Charles L. Thayer Revocable Trust, Charles L. Thayer, Trustee, owner, Jerry Thayer, applicant**, for property located at **21 Richmond Street** wherein a Variance from Article III, Section 10-303(A) was requested to allow a 36' x 25' two and a half story single family dwelling to be built after the demolition of the existing home with: a) a 7.27' ± right side yard where

10' is the minimum required, b) a 5'± rear yard where 15' is the minimum required, and c) a total lot area of 4,302± s.f. where 7,500 s.f. is the minimum lot area required. Said property is shown on Assessor Plan 108 as Lot 16-2 and lies within the Mixed Residential Office and Historic A districts. *This item was tabled at the March 6, 2007 meeting.*

Mr. Parrott stepped down for this petition.

Mr. Witham made a motion to remove the petition from the table, which was seconded by Mr. Jousse and approved by unanimous voice vote.

SPEAKING IN FAVOR OF THE PETITION

Attorney Ralph Woodman referred to plans and information submitted to the Board and gave a brief history of the property in question. The current house, which is wider than the proposed, sits on the rear property line and comes within the 10' setbacks on both sides. What they were proposing would take the rear yard setback from 0' with the current house to a 5' to 8' setback. The left setback, facing the house would become conforming. The right setback would be between 7.27' and 8'. The reason for the variance on the right side was the bulkhead proposed for that side of the house, which he indicated in a submitted photograph. The main part of house complies with the side setback requirement. A variance is need for lot size, which is 4,300 s.f. where the minimum required is 7,500 s.f. There would be no change to the driveway. He referenced a report in the file and submitted photographs that show the essentially unsafe condition of the existing house, which would cost \$380,000 to repair. If more than 50% of the house requires repair, they must bring up to current code, which is impossible so they want to rebuild. He indicated he had a petition of support signed by neighbors, who, he stated, prefer the proposed new location because it preserves green space in front of the house, allowing light and air.

Addressing the legal requirements, Attorney Woodman stated that it would be in the public interest to replace the current house one by one that is tasteful and completely up to code. They would just be replacing a single family home. It would be consistent with the spirit of the ordinance to preserve green space in the front of the property. Substantial justice would be done and the value of surrounding properties would not be diminished, but could be increased.

In response to questions from the Board, Attorney Woodman stated that the current building had a 432 s.f. footprint and living area just under 1,000 s.f.. The new footprint would be 900 s.f. The parking area was just off the street and was enough for two cars.

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

With no one rising, the public hearing was closed

DECISION OF THE BOARD

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

Mr. Jousse stated this was one of those lots created years ago when houses were small and close together. It would be more advantageous to remove the present dwelling and replace with a new one more conforming to all of the standards. The dwelling was right on the line now and would be more in conformance with the rear setback by 6'. The hardship is that it was a lot created 200 years ago perhaps. There was no other way to accomplish what they want. If the building was moved forward, they would lose a lot of green space with nothing really gained. Nothing had been presented as far as the value of surrounding properties.

Mr. LeMay stated it was consistent with the spirit of the ordinance to have a single family dwelling.

Chairman LeBlanc stated that the right side yard infringement was minimal because it was level with the ground and not really visible to neighbors. This was a minimal request.

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

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D) Petition of **Tylene A. and Alain R. Jousse, owners**, for property located at **197 Dennett Street** wherein the following were requested: 1) Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) to construct a 13'4" x 16' x 1' two story addition with: a) a 5'10"± right side yard where 10' is the minimum required, and b) a 15'2"± rear yard where 20' is the minimum required, 2) a Variance from Article III, Section 10-302(A) to allow a second dwelling unit on a 4,335.7 sf lot where 15,000 sf would be required for two dwelling units; and, 3) a Variance from Article XII, Section 10-1204 Table 15 to allow one onsite parking space to be provided where 3 parking spaces are required. Said property is shown on Assessor Plan 142 as Lot 8 and lies within the General Residence A district. *This item was tabled at the March 6, 2007 meeting.*

Mr. Jousse stepped down for this petition.

Mr. Witham made a motion to remove the petition from the table, which was seconded by Mr. Sanders and approved by unanimous voice vote.

**SPEAKING IN FAVOR OF THE PETITION**

Ms. Wendy Welton stated that this was one of those cases where it sounded like a lot more relief than was being requested. The property was two dwelling units for a long time with two different addresses on two different streets and still had a second kitchen and separate utilities. They were asking to remove the old addition and replace it with one with two stories to provide a bedroom and sitting room for a mother-in-law. The new addition would fit better in appearance with the main house and be more in scale.

Regarding the parking, Ms. Welton stated that, functionally, there were 2 to 3 additional spaces traditionally used with this house, which were on City property to support the structure. There was nowhere else to put parking except on the lawn.

Addressing the criteria, Ms. Welton stated that anything that can be done in the neighborhood to make things attractive would be in the public interest and they had neighborhood support. The Zoning Ordinance allows two families. She passed around copies of a city directory on which the two-family dwellings in the area were highlighted. She noted there were multiple doors connecting the two units internally. It was also in the spirit of the ordinance to prevent overcrowding. On the next lot over, there was plenty of room to the next house. The special conditions were that it was an old, undersized lot, bordered by streets on three sides. They believed property values would be enhanced by the proposed changes.

Chairman LeBlanc asked if the roof of the new addition would be roughly equivalent to the main part of the house and Ms. Welton stated the ridge would be at the same height. They made some adjustments to design to avoid a boxy look.

There was a brief discussion of parking options among Ms. Welton, Mr. Jousse, and Chairman LeBlanc, with spaces noted in front of the house and the triangle between Kane and Dennett Streets which are technically no parking, but are used by the neighborhood. Mr. Jousse noted they could park 3 cars off Kane Street which were off the street for snow removal. There was also parking along Kane Street.

Mr. Parrott asked if any use were made of the structure marked on the plan as an abutters outbuilding and Mr. Jousse stated it was a garage used for storage.

Mr. Sanders asked if the owner of the outbuilding had responded and Mr. Jousse stated they had informed their neighbors of their intent and all were basically in favor of the project.

In response to a question from Mr. LeMay, Mr. Jousse stated that since the 1937-1963 years when it was documented as two addresses, the second dwelling unit has been used intermittently. Although the assessors coming out have noted two kitchens, it has been listed on the tax card as a single family dwelling.

Ms. Welton noted that having the second kitchen triggers a request for a variance, although the occupants may be going back and forth between the two units. In response to a question from Chairman LeBlanc, she stated there will be no increase in the square footage of the footprint.

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

With no one rising, the public hearing was closed.

### **DECISION OF THE BOARD**

Mr. Parrott made a motion to approve the petition as presented and advertised, which was seconded by Ms Eaton.

Mr. Parrott noted that the dwelling was in a district in which 2, 3, and 4 dwelling units were allowed. Secondly, the orientation was unusual with the one abutter off the back of the house, but facing the side of the next property. In between well spaced houses, there was also an outbuilding as a buffer. Third, the footprint was not being enlarged.

Addressing the criteria, he stated the petition should be granted for the following reasons:

- The unique orientation of the lot, bounded on three sides by streets, limits options for the expansion.
- The existing footprint will not be expanded to infringe on neighbors or the street.
- One of the boundary streets is a dead-end street, so traffic will not be negatively affected and there are options for on-street parking.
- The zoning district allows 2-unit dwellings and this will have little impact in a well established neighborhood of similar homes and lot sizes.
- Property values could benefit from an attractive addition.

Ms. Eaton added that she felt the variance comes to the parking issue which had been well covered. Regarding the use, this used to be a two-family and is in a zone that allows such use.

The motion to approve the petition as presented and advertised was passed by a vote of 6 to 1, with Mr. Witham voting against the motion.

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II. PUBLIC HEARINGS

1) Petition of **Andrew J. Widen, owner**, for property located at **955 Sagamore Avenue** wherein a Variance from Article II, Section 10-208 was requested to allow the 2nd floor on an existing building to be converted into a dwelling unit in a district where such use is not allowed. Said property is shown on Assessor Plan 201 as Lot 1 and lies within the Waterfront Business district.

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernard Pelech referenced the site plan on display, indicating the locations of the lot and setbacks, as well as the steep slope. While it looks on the tax map like a large piece of land, topography was the determining factor. 75-80% was unbuildable because of the slope and the height of the land above Sagamore Creek. The property is zoned Waterfront Business and the first floor would remain in that use, but they were seeking to allow the vacant second floor to be used as a residence. The Waterfront Business zone was outlined on the tax map handout, on which every lot with a residential use was marked “r”. This is first lot which does not have a residence. He read some of the uses allowed in the Waterfront Business zone and stated it was difficult to find a use for the property as everything is 30’ above high tide. They do use the docking and storage and have a seasonal operation on the first floor. They felt a mixed use was appropriate here.

Addressing the criteria under Simplex, Attorney Pelech stated that values, if anything would be increased by activity in a previously vacant building and there would be no indication from the outside that there was a residence on the second floor. The hardship arises from the lots unique setting in its environment. This is one of the largest lots on that road, but many feet vertically above the creek. He stated there is no fair and substantial relationship between the zoning and the restriction on the property as the first floor can still be used. The 2nd floor would not work as retail. This will not injure public or private rights to have one housing unit, which will provide security at night. He maintained this was not contrary to the spirit of the ordinance as there were two current Waterfront Business uses on the property. If you balance the hardship on the owner, who found it hard to find tenants for the second floor as so many uses were not allowed against some benefit to the public, there would be justice in granting the variance.

In response to questions from the Board, Attorney Pelech stated the second had roughly 1,470 s.f. in a building constructed in 2000. The purpose of the 2nd floor was some type of business use. He didn't believe a residential use on the second floor would hurt their ability to put a viable business on the first floor. One unit was the lobster pound which would be reopening and they hoped for a gift shop or other allowed office use for the second unit.

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

With no one 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 for discussion by Mr. Jousse.

Mr. Witham stated he has supported maintaining the integrity of the Waterfront Business District, but he didn't see this situation as losing a waterfront business opportunity *per se*. It was difficult to imagine what allowed use could happen on that second floor, particularly with the difficult water access. He wouldn't support the whole property going residential, but was comfortable with mixed use.

Addressing the criteria, he noted a significant portion was still dedicated to Waterfront Business use. The special conditions were the existing building and the restrictions which limit what could happen there. He felt it would be in the spirit of the ordinance as 1,400 s.f. would be available for public use. He stated that the benefit to the applicant would outweigh any disadvantage to the public by having a reasonable mixed use. He noted there were other residences in the area.

Mr. Jousse stated that, in this particular case, he couldn't imagine any kind of marine related business moving into the 2nd floor, which remained vacant for several years.

Mr. Sanders stated that the property is rather attractive, and in a good location even though the height off the water is exceptional. He felt that it boiled down to whether an exception for the 2nd

floor would improve or benefit the first floor and he didn't see how it would make it any better for the first floor businesses. He had difficulty supporting the request as he was concerned that a half residential building could be a step toward the whole building in the future.

Mr. Parrott agreed. The Waterfront Business was the most unique zone they have and, whenever possible, they should preserve it and not let little proposals chip away because each one becomes a reason for another. There was no demonstration of hardship in the land. The owner made the decision to put up a larger building, which clearly was constructed as a commercial building. The Zoning Ordinance was very specific when it says Waterfront Business is for certain identified purposes. To put half a building into residential use would almost be spot zoning, which would be illogical and contrary to the spirit of the ordinance.

Ms. Eaton stated that her concern was that the structure was not built that long ago and allowing the 2nd floor to be used as a residence might diminish its use as Waterfront Business.

Mr. LeMay agreed that, given the young age of the building, the building hardship was of the owner's own creation. There was a waterfront business there now.

Mr. Witham stated that the Board had made a number of very valid points.

The motion to grant the petition as presented and advertised failed to pass by a vote of 1 to 6, with Ms. Eaton and Messrs. Jousse, LeBlanc, LeMay, Parrott and Sanders voting against the motion.

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2) Petition of **Jorgensen Family Trust, Nathan and Kristie Jorgensen Trustees, owner**, for property located at **112 Highland Street** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow a 22' x 26' second story addition on an existing detached garage now being attached by constructing a connecting a 185 sf irregular shaped breezeway with: a) the garage having a 1'6"± right side yard where 10' is the minimum required, and b) a 2'± rear yard where 20' is the minimum required. Said property is shown on Assessor Plan 134 as Lot 25 and lies within the General Residence A district.

**SPEAKING IN FAVOR OF THE PETITION**

Mr. Dell Fox put up a photo exhibit showing the existing conditions. They want to build a new roof on the garage that had been built in 1972. They would match the original house in pitch, add some dormers on the side and change the garage door. This would allow space for a "rec room" and maybe a home office area. They would also like to connect the house to the garage as indicated on the site plan and add a second story over the currently enclosed porch. He noted they were not increasing the footprint within the setbacks. He stated there were many houses in the neighborhood that have similar structures, many of which encroach. The space above the garage would not be used as sleeping quarters, only as a family room. There would be no extra traffic or parking and it would enhance the neighborhood to have a better looking garage structure.

In response to questions from Chairman LeBlanc, Mr. Fox indicated the location of the 10' wide breezeway on the site plan and stated it would connect with only the first floor of the house and not be within the setbacks. The 2<sup>nd</sup> floor addition would be over the area he indicated on the plan.

Mr. Sanders asked what the building was that was on the adjacent property behind the garage and how far it was from the garage.

Mr. Fox stated it was a two-car garage which was about 8' off the property line.

Mr. Nathan Jorgensen stated that the proposed area would be utilitarian and aesthetically pleasing. He stated it would fit well with the neighborhood.

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

Ms. Diane Stradling stated she has lived at 351 Union Street for 23 years and wanted to, first, make a correction. In 1983, there was a one-car garage on the property, so the garage was not built in 1972. The family living there at the time later came around to the neighbors, saying the garage was falling apart and they came before the Board for a variance to build a 2-car garage. The use then was going to be totally a garage. The building referred to earlier as being behind the garage was hers and it is 15' from the property line. She is concerned with this proposal because of the height and scale of the structure which would loom over her small back yard. If the garage were attached, it became part of the main building, which brought the main building to less than 2' from the property line. She presented photographs showing the garage from her perspective and stated the garage had not been maintained. She read portions of a letter from Mr. Brian Rogers, a neighbor who also opposed the project.

In response to questions from the Board, Ms. Stradling stated that her house was about 20' from the property line at an angle. The property slopes down, but she couldn't estimate the drop.

Mr. James Beland stated his property was at the back of 112 Highland Street and he opposed the proposal due to the height and potential use of the garage as a recreational area close to the back of his house.

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

Mr. Fox stated that the abutter's garage was about 20' x 20' and he believed it was about 40' from the property line.

In response to questions from the Board, Mr. Fox stated that the height of the existing ridge line was 22' and the proposed was 29'. They could eliminate the windows in back if necessary. He stated the property slopes about a foot.

Chairman LeBlanc stated he believe the slope was more than that.

Mr. Jorgensen stated that it really was not much from one yard to the next. The hill goes in the other direction. There was not enough grade between Union and Highland Streets. Regarding the



point made by the abutter that the garage had not been maintained, he stated that the proposal would take care of that.

Mr. Parrott raised a question about the maximum structural coverage percentage, stating he had been unable to obtain the dimensions from the sketch. There was a brief discussion among Mr. Parrott, Mr. Fox and Ms. Tillman about the issue, with Ms. Tillman stating that that the best she could determine from the materials submitted was 24.5% with the breezeway. The existing structural coverage was 21%.

Mr. LeMay commented that there was an opportunity on this lot to make the garage closer to the house and less encroaching on rear and side setbacks. They were basically taking it down anyway.

Mr. Fox stated that these were small lots and, when you come to the end of the house, you have to turn very slowly to get into the second bay. It would be difficult to tear down and completely rebuild the garage.

Mr. Witham asked if they were using the existing foundation and Mr. Fox responded that they were not touching the garage first floor, just taking off the roof and making it 12 pitch.

Ms. Kristie Jorgensen stated that they simply wanted an enlarged family area and for storage. Their pool was on the other side. With the structure that acts as a buffer to the neighbor, she didn't feel there would be issues with noise.

## **DECISION OF THE BOARD**

Ms. Eaton made a motion to deny the petition, as presented and advertised, which was seconded by Mr. Witham.

Ms. Eaton stated that she felt the original variance was granted for a garage because it was a one-story. She had driven Union Street to see the impact and that area of Highland Street was quite a bit higher. She felt the proposed garage would loom, impacting the neighbors and be contrary to the public interest. The proposal did not meet the criteria for special conditions as a recreational area was not a necessity. This would increase density and justice would not be served as it may negatively impact the public.

Mr. Witham stated that he didn't believe this was the spot for a large garage, which would go right up against the property line. This would be a tall structure with lighted windows as opposed to a simple garage. While it might be attractive, it would be a different experience for the abutters. This was too much, in too tight a spot, which would have an adverse impact. They could design and scale back some of the dormers and windows.

Mr. Sanders commented that the Board has to look at the future and whatever plans the current owners might have to use the second floor as only a recreation room and office might not apply as years go by.

Mr. Parrott stated that the garage was only 2’ off the back property line and only a foot and a half off the right side property line. They were required by the zoning ordinance to consider the effects of light. The east sun shines on the existing garage and shadows the back yard of property directly behind. Raising it another 7’ would be quite a bit more of an imposing structure and throw quite a shadow on the adjacent lot to its detriment. If there were more space to the property line, it would not be as much of a concern, but they have to deal with it as it exists on the lot.

The motion to deny the petition was passed by unanimous vote of 7 to 0.

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3) Petition of **Premier Seacoast Holdings, owner**, for property located at **966 Islington Street** wherein the following were requested: 1) a Special Exception as allowed in Article IV, Section 10-401(A)(1)(d) to relocate an existing non-conforming dwelling unit on the 2nd floor to the 1st floor maintaining a total of four dwelling units on the property and eliminating the non-residential use in a district where only one dwelling unit is allowed on a lot in the Single Residence B district, and 2) a Variance from Article XII, Section 10-1201(A)(3)(a) to allow the existing 5 parking spaces as laid out and to back out onto the street. Said property is shown on Assessor Plan 171 as Lot 1 and lies within the Single Residence B district.

SPEAKING IN FAVOR OF THE PETITION

Mr. Kent Hubbard stated he was representing the management partnership which was requesting a Special Exception to relocate one of the residential units to the first floor. This would create a 4-unit building that was totally residential, eliminating the retail use. They would spruce up the building and create somewhat affordable housing. He stated they had significant positive reaction and he submitted a letter of support from the next door neighbor at 954 Islington Street, portions of which he read.

With regard to parking, Mr. Hubbard stated there were currently 5 parking spaces but it was difficult on that lot. With retail space, there were 7-15 visitors a day. They felt that converting to residential would positively impact traffic flow and would increase the value of neighbors’ property.

Mr. Parrott questioned an apparent discrepancy between the units shown on one plan and the presentation. Mr. Hubbard stated they were seeking to eliminate one unit and would then have a total of four units. After a brief discussion, Chairman LeBlanc stated they were presenting the project as four units so that was how it would be granted if approved.

Mr. Sanders questioned what appeared to be a driveway on the left.

Mr. Hubbard stated they could actually park three cars on the driveway, but it would be by putting them end to end, which would not be conforming parking so they chose to only designate the 5 which would fit.

SPEAKING IN OPPOSITION TO THE PETITION, OR

SPEAKING TO, FOR OR AGAINST THE PETITION

With no one 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 noted that, in granting the Special Exception, there would be less traffic and, with less units, less noise. Regarding parking, there was a fairly wide area to handle vehicles backing out. The Special Exception and Variance should be granted for the following reasons:

- There will be no increase in conditions such as heat, odors, noise or storm water run-off that would present a hazard or negatively impact the property values of neighbors.
- A non-residential use will be eliminated in a single residence district.
- The parking spaces have existed with no negative impact and this less intense use should reduce parking activity.
- Islington Street widens at this point so traffic will be more visible to exiting vehicles.

Mr. Parrott asked if the maker of the motion would agree to a stipulation that there would be no more than four dwelling units on the property. Mr. Witham agreed.

Mr. Parrott added that this would eliminate a non-residential use in a Single Residence B zone. He noted there would be no excessive demand for services.

The motion to grant the petition as advertised and presented with the stipulation that there be no more than four dwelling units on the property was passed by unanimous vote of 7 to 0.

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4) Petition of **Christian Berling, owner**, for property located at **117 Ash Street** wherein Variances from Article II, Section 10-206(12) and Article XII, Section 10-1201(A)(3)(a) were requested to allow 100 square feet in a single family dwelling to be used by the owner to “tutor reading” and to allow the required parking space to back out of the driveway with the existing screening to remain. Said property is shown on Assessor Plan 150 as Lot 36 and lies within the General Residence A district.

Ms. Meg Woods stated that they were seeking approval to allow her to tutor students and to allow vehicles to back out of her driveway. She passed out photographs showing the driveway from different perspectives.

In response to questions from the Board, Ms. Woods stated that her house was the last on the street; her students would be in the kindergarten to third grade age group; would be dropped off by their

parents; and she would tutor approximately four children per week. The hours would be governed by the parents, but she would prefer Monday through Friday.

Ms. Tillman read from the Zoning Ordinance the criteria regarding hours of operation for Home Occupation II being 8:00 a.m. to 5:00 p.m., Monday through Friday.

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

With no one rising, the public hearing was closed.

**DECISION OF THE BOARD**

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

Mr. LeMay stated that the Zoning Ordinance envisions home occupations and this meets the criteria. Regarding special conditions, the home was at the end of a dead end street with low traffic so this would be a reasonable use and not pose a threat to public safety. The minor increase in activity would not affect the public or private rights of others. There might even be some benefit to have a few people coming and going and justice would be served by allowing the homeowner to operate a small business. He couldn't see how the value of surrounding properties would be diminished.

Mr. Sanders added that the location at the end of the street provides ample space for vehicles to turn around and there was sufficient screening to provide protection. He would like to add a limitation on hours of operation to 8:00 a.m. to 5:00 p.m., Monday through Friday.

Chairman LeBlanc asked if the maker of the motion would like to add that as a stipulation and Mr. LeMay stated he would. Mr. Sanders seconded the addition.

The motion to grant the petition as presented and advertised with the stipulation that the hours of operation will be limited as stipulated in the Zoning Ordinance for a Home Occupation II, 8:00 a.m. to 5:00 p.m., Monday through Friday, was passed by unanimous vote of 7 to 0.

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5) Petition of **Heritage and Lafayette LLC, owner**, for property located at **2800 Lafayette Road** requesting an Equitable Waiver as allowed in NH RSA 674:33-a (Equitable Waiver of Dimensional Requirement) to allow an existing 36,328+ sf building with: a) a 104.9' front yard where a 105' front yard is required in Article III, Section 10-301(A)(8), and b) a 29.6' left side yard where 30' is the minimum required in Article III, Section 10-304(A). Said property is shown on Assessor Plan 285 as Lot 2 and lies within the General Business district.

SPEAKING IN FAVOR OF THE PETITION

Mr. Mark Mscisz stated that they had purchased the property, known as the White Birch property, and had submitted an application to completely renovate it. There was an issue arising from the application with the side and front lot lines. City Counsel had addressed the issue in two letters copies of which they had submitted, but they decided to formalize the process through an Equitable Waiver request.

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

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

Mr. Witham made a motion to grant the Equitable Waiver of Dimensional Requirement as presented and advertised, which was seconded by Mr. Sanders.

Mr. Witham stated there were only a few inches on two sides involved, which was probably an honest mistake in setting the foundation. There was no attempt to deceive and this was well deserving of an Equitable Waiver.

Mr. Sanders stated that City documents confirmed the comments made and an Equitable Waiver should be granted.

The motion to grant the Equitable Waiver of Dimensional Requirement as presented and advertised was passed by unanimous vote of 7 to 0.

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There was a brief discussion of a work session to be held by the Board. It was decided to hold the session on April 3, 2007 at 6:30 p.m. in the Planning Department Conference Room.

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IV. ADJOURNMENT.

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

Respectfully submitted,

Mary E. Koepenick, Secretary