

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

CONFERENCE ROOM A

7:00 p.m.

May 15, 2007

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

EXCUSED: Chairman Charles LeBlanc

ALSO PRESENT: David Holden, Planning Director

I. OLD BUSINESS

A) Approval of Minutes - April 17, 2007

After minor clerical corrections were noted, a motion was made, seconded and passed by unanimous voice vote to accept the Minutes as corrected.

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**II. PUBLIC HEARINGS**

1) Petition of **Two Girls Realty, LLC, owner, beleza Mazzari and Sanger Communications, applicants**, for property located at **261 South Street** wherein the following were requested: 1) a Variance from Article II, Section 10-206 to allow: a) beleza Mazzari, a skin care business with one treatment room and two rental treatment rooms, and common waiting room in the rear portion of the building operating six days a week from 9AM to 8PM, and b) Sanger Communications business office/gallery in 433 sf of the front portion of the building operating six days a week from 9AM to 8PM with shared storage and bathroom with beleza Mazzari in a district where such uses are not allowed, and 2) a Variance from Article XII, Section 10-1204 to allow no conforming parking to be provided onsite where 6 onsite conforming parking spaces are required. Said property is shown on Assessor Plan 111 as Lot 34 and lies within the General Residence A and Historic A districts.

Vice-Chairman announced that the petition had been withdrawn by the owner.

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2) Petition of **David F. Mahoney Marital Qtip Trust, Jaqueline Mahoney Trustee, owner**, for property located at **227 Market Street** wherein a Variance from Article III, Section 10-305(A) was requested to allow the existing 24' x 58' building to be moved with the proposed location to have a) a 20'± front yard where 70' is the minimum required, and b) a 5'± right side yard where 50' is the

minimum required. Said property is shown on Assessor Plan 119 as Lot 6 and lies within the Waterfront Industrial district.

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernard Pelech stated that the property was the site of the Granite State Minerals salt operation. The State of New Hampshire Bureau of Weights and Measures has now required them to install a second scale so that trucks can be weighed entering as well as leaving. They are proposing to take the existing scale house and slide it to the right, placing it 20' back from the front property line. This would enable them to install the required second scale where the existing scale house now stands. The traffic pattern will be improved, with trucks weighing in on the left hand scale and weighing out on the right. With this arrangement, they can also better view the site to comply with the Homeland Security Act. A variance is needed due to the 70' front setback in the Waterfront Industrial district, as well as a side variance.

Attorney Pelech maintained that it was in the public interest to have the scales near the entrance and exit and to have the scale house in close proximity. Traffic would flow better and this would enable the City to make improvements to the right-of-way. There was no way to avoid placing the structure within the front setback. The hardships were created by the fact that this is Waterfront Industrial property and that two scales are required. They considered all alternatives and this is the most reasonable. There was a substantial masonry wall surrounding the property which mitigates the fact that the scale house will be 5' from the property line. He stated that there was no benefit to the public in denying the variance that would outweigh the hardship on the owner, as this was being mandated by the State. Values will not diminish as the same scale house will be moved further from Market Street and be buffered by the existing wall.

In response to questions from the Board, Attorney Pelech stated that the height of the wall varied from 5' to 6' in front and 4' to 5' on the Ceres Street side. The other alternatives they considered limited the free flow of traffic and this arrangement provided a better view of the entire site.

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. Grasso.

Mr. Jousse stated that the variance was needed to enable the applicants to abide by the new State Law requiring them to add a scale to their operation, which entails moving the scale building. They must also meet security requirements. He noted that it had been presented by the applicants that there is no other feasible location to place the building. He didn't believe the value of surrounding properties was going to be affected.

Mr. Grasso added that the proposal made a lot of sense and moving the building further away from Market Street would be in the public interest.

Mr. Sanders stated that the problem of a very large truck departing on the scale while another waited to get in would be eased by this arrangement.

Mr. LeMay stated that to allow them to operate in an effective way was in the public interest. The buffering wall will remain and the value of surrounding properties will not change as the character of the use was not changed.

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

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3) Petition of **Robert F. and Diane R. Vieira, owners**, for property located at **32 Manning Street** wherein a Variance from Article IV, Section 10-402(B) was requested to allow an air conditioner condenser 3’ wide by 3’ deep by 3’ high with 6”± right side yard where 10’ is the minimum required. Said property is shown on Assessor Plan 103 as Lot 68 and lies within the General Residence B and Historic A districts.

**SPEAKING IN FAVOR OF THE PETITION**

Mr. Robert Vieira stated that they were requesting to install an air conditioner condenser at the rear of their property. They had considered various areas of the rear yard and the least conspicuous was on rear right hand side. There was also an old alder tree, which they didn’t want to compromise. Wherever they considered putting the condenser, it was not going to be less than 10’ from the property line.

In response to a question from the Board, he stated he had spoken with his neighbors and they are on board with the project. He stated that the condenser would sit on the existing patio so the roots of the tree would not be disturbed.

There was a brief discussion on the existing standards for noise, the level of noise that would be generated, and how that might be mitigated for the neighbors. It was decided that, if a motion to grant the variance were made, a stipulation would be added to address the noise issue.

**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. Parrott.

Mr. LeMay stated that this was a reasonable request for a lot with special conditions, which were its small size and odd shape. The Zoning Ordinance allowed the installation of such units but a variance was needed to place the unit in the most practical spot. The public interest and justice would be served by the stipulation that the unit comply with the pertinent section of the ordinance.

Mr. Witham asked if he and Mr. Parrott would like to add to the motion the stipulation that the standards for noise outlined in Article V, Section 10-505 of the Zoning Ordinance be met. Mr. LeMay stated he would and that compliance should be demonstrated as part of the installation.

Mr. Parrott agreed with the stipulation, but pointed out that any action that they take is independent of the compliance with the noise requirements as they're separate and distinct. He added that there was an obvious hardship in the size and configuration of the lot.

Vice-Chairman Witham noted that four or five window units would be noisier and less attractive than the condenser.

The motion to grant the petition, with the stipulation that the standards for noise outlined in Article V, Section 10-505 of the Zoning Ordinance be met, passed by a unanimous vote of 7 to 0.

Vice-Chairman Witham stated to the applicants that, once the unit is installed, they should let the City know and someone would come out and test it.

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4) Petition of **Kevin G. Bowersox and Meghan M. Masi, owners**, for property located at **144 Raleigh Way** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-402(c) were requested to allow a 12' x 16' open deck with a 5'± rear yard where 25' is the minimum required. Said property is shown on Assessor Plan 212 as Lot 47-1 and lies within the General Residence B district.

SPEAKING IN FAVOR OF THE PETITION

Ms. Meghan Bowersox stated that they were asking to build a 12' x 16' deck. They have a fence in their back yard and the deck with railing, at its highest point, is 6' which will not exceed the height of the fence. The deck will not interfere with their neighbors light and air. They had spoken with the neighbors, who had no concerns. She stated that the deck could not be constructed anywhere else and would replace existing exit stairs which have no railing. She felt that the value of surrounding properties would increase.

In response to questions from Mr. Witham, Ms. Bowersox stated that, due to the ground slope, the deck is on the ground in some places and up to 2 ½' off the ground in others. With the layout of the house, this was really the only location for the deck. She indicated for Ms. Eaton the location on the plan of the other duplex unit and stated her lot was more truncated than the others because it was a corner lot.

Mr. Michael Power stated he lived at 105 Saratoga Way, directly across street. He stated he was one of the abutters most affected and came to support the request. He noted the City had worked hard on Atlantic Heights neighborhood improvements and it was becoming more owner occupied. He felt the deck would enhance the property and be a good use of the lot. He expected his property values to increase as a result of the improvements.

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. Grasso.

Mr. Jousse stated that, in this neighborhood, most of the properties would not meet the setback requirements. Because of the size of the lot, there was no other feasible location for the deck. The special conditions were the size and the oddly shaped lot. The public interest would not be served by a denial and he believed that values of surrounding properties would not be diminished.

Mr. Grasso stated that he agreed, adding that all the lots in the Heights are very small and almost any proposal would have to come before the Board. He felt the deck size was not unreasonable.

Mr. Parrott stated that he would be happy to support a smaller deck, but cannot support this one given its size relative to the scale of the house and lot, and its placement. The principle is to look to the minimum relief to achieve the desired result. He hadn't heard why a smaller deck would not be more in keeping with the size of the house and lot.

Ms. Eaton stated she had the same concerns and suggested the applicant might want to amend their petition or present why the deck had to be this size.

Vice-Chairman Witham stated the Board could always grant less relief and felt they should move forward with the decision.

The motion to grant the petition as presented and advertised was passed by a vote of 5 to 2, with Ms. Eaton and Mr. Parrott voting against the motion.

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5) Petition of **Robert Hugo, owner, Tom Holbrook, d/b/a RiverRun Bookstore, applicant**, for property located at **20 Congress Street** wherein a Variance from Article IX, Section 10-908 was requested to allow a 40" x 20" (5.6 sf) projecting sign for: a) a total of 18.1 sf of projecting signage where 15 sf of projecting signage is the maximum allowed, and b) a total of 78.1 sf of aggregate signage where 75 sf is the maximum allowed. Said property is shown on Assessor Plan 117 as Lot 37-104 and lies within the Central Business B, Historic A and Downtown Overlay districts.

**SPEAKING IN FAVOR OF THE PETITION**

Attorney Bernard Pelech stated that this petition and the next one to be heard had the same background. Theoretically, a variance was not needed for the property. The problem is that, in looking at an architectural rendering, it appears to be separate buildings, but there is only one lot, which is allowed 15 s.f. of projecting signage. After discussions with the Inspection Department, the developers decided to allocate 2.5 s.f. to each of the six businesses, which is not much for each. He outlined how the figures were computed to arrive at the advertised amounts of total signage. Noting that the sign had been approved in its former location by the Historic District Commission, he stated that it was tasteful and not overbearing. The hardship was that there were only 15 s.f. of attached signage to be split among the businesses.

Attorney Pelech stated that the Zoning Ordinance was not intended to deal with multiple storefronts on one lot. It was in the public interest to allow the motoring public to readily identify store locations and there would be no diminution in the value of surrounding properties. He stated that there was no reasonably feasible alternative and there would be no benefit to the public in denying the variance. A 2 ½ s.f. sign would not fulfill its intent of identifying the property.

Mr. Tom Holbrook stated that he is the owner and manager of the store. The intended sign had been on a much smaller storefront in Commercial Alley so the proportion of the sign to its building was actually being reduced. Other signs on the street were similar in scale and this sign was needed as it was difficult to see a flat sign unless you were across the street.

Mr. Sanders noted that two cooperative efforts were before them that evening, with the potential for two signs and asked how the other shopowners would be affected.

Attorney Pelech stated that the applicant for the next petition had indicated she had conversations with the next business and it was her belief they were satisfied with the signage and may not be asking for a projecting sign. He couldn't say about the others. Under the ordinance, they can have 2 ½ s.f. or come in for a variance. In response to a question from Mr. Jousse, he stated there was wording on both sides of the 5.6 s.f. sign, but only one side counted for size.

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

With no one rising, the public hearing was closed.

Prior to the Board deliberations, Mr. David Holden stated that, because the variance request was for signage, if granted, it should also be subject to the approval of the Historic District Commission.

### **DECISION OF THE BOARD**

Mr. Sanders made a motion to grant the petition as presented and advertised with the stipulation that it be subject to the approval of the Historic District Commission. Ms. Eaton seconded the motion.

He stated that traffic was moving through the area and it was not in the public interest to have people slowing down to see what was at this location. There were adequate conditions to support a projecting sign for these businesses along the side of the street.

Ms. Eaton stated that it was in the public interest to have adequate signage at this location. Supporting downtown businesses also supports the master plan. The intent of the Zoning Ordinance was to have one lot with one business but it doesn't work in this case. This was only 5.6 s.f. and the building was a reasonable size to support this amount of signage. The sign size was typical of the area so there would be no diminution in the value of surrounding properties.

Mr. Jousse stated that nothing had been presented that would indicate the variance would be beneficial to the public interest. There was ample parking space if visitors wanted to look around. The rest of the businesses in the area were governed by the same set of rules and no hardship was

presented as far as the property was concerned. Having the sign at a previous location didn't justify placing it at this location.

Mr. LeMay stated that this was most likely the first in a series of six variance requests, but he didn't know what could be done given current zoning

Vice-Chairman Witham stated that, while usually the Board was reluctant to grant signs, it comes down to the issue of scale. Approaching the lot as it appears - three separate entities - this would be within spirit of the ordinance and not stretch bounds. The applicants were seeking roughly 30% less than would be allowed in a building of this scale.

The motion to grant the petition, with the stipulation that the sign would also be subject to the approval of the Historic District Commission, was passed by a vote of 6 to 1, with Mr. Jousse voting against the motion.

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6) Petition of Nancy Grigor, owner, **Good Vibes Inc., applicant**, for property located at **16 Congress Street** wherein a Variance from Article IX, Section 10-908 was requested to allow: a) a 4.4 sf projecting sign for a total of 20 sf of projecting signage where 15 sf of projecting signage is the maximum allowed, b) a 16' x 15" (20 sf) attached sign for a total of 70 sf of attached signage where 60 sf is the maximum allowed; and, c) 90 sf of aggregate signage where 75 sf is the maximum allowed. Said property is shown on Assessor Plan 117 as Lot 37-203 and lies within the Central Business B, Historic A and Downtown Overlay districts.

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernard Pelech stated that this was a companion application to the previous one. The proposed projecting sign was 4.4 s.f., which is 1.9 over the 2.5 s.f. which had been allocated. If added to the previous application, the total projecting was now up to 20 s.f. One of the anomalies of the Zoning Ordinance is that it purports to allow 1 1/2 s.f. of signage per linear foot of storefront up to a maximum which, in this district, would be 15 s.f. per lot. These stores all have 32' of frontage on the street. Theoretically, each should have an aggregate of 48 s.f. of signage, but they don't even have half of that. They only have the allocated 2.5 s.f. of projecting signage and 10 s.f. attached signage.

He stated that it was in the public interest to allow tourists to locate stores in Market Square. There are many accidents on the street as tourists look around. Projecting signage allows them to see where stores are located. As with the previous application, this would not be contrary to the ordinance. A hardship does exist because of the special conditions of this property. There's roughly 250' of building frontage on one lot which only gets 15 s.f. of projecting signage and 60 s.f. of attached signage.

There is an attached sign that's being proposed which is 15" high and 16' long, or roughly 20 s.f. This is the second part of the application. They're allowed 10 s.f. and the whole property is allowed 60 s.f. The other attached signage for Helene M, the new realtor and Popovers is apparently sufficient and complies with the ordinance. He stated that justice would be done by granting this part of the variance request and there would be no diminution in the value of surrounding properties. The

City has been trying to encourage ground level businesses in the downtown and everyone sees this project as an improvement.

Ms. Eaton asked if he could talk in more detail about the other businesses and their attached signage.

Attorney stated that Popovers has 19 s.f of attached signage for their two storefronts. Helene M has 9.66 s.f. and River Run has 9.02 s.f. The sign that's up there now for Good Vibes is 9.8 s.f. That totals 47.46 s.f. without the new real estate company, for which information was not yet available.

In response to questions from Ms. Eaton, Attorney Pelech responded that each business was allocated 10 s.f. of attached signage. Popovers did not need a variance for their amount as they had a double storefront so could use 20 s.f. As of now, everyone was meeting their allocation. He stated the proposed sign is higher than the others and stretches across the storefront.

Mr. Ralph DeMarco stated that, when they first opened, the sign simply said “Good Vibes”, but there was no room for “Life is Good,” which they felt had more name recognition. They feel they need that name as well, but there is nowhere to put it on the 10 s.f. sign.

Attorney Pelech stated that with the size of the rectangles above the windows, the sign that is there now looks lost.

Mr. Tom Holbrook stated that he understood that the idea of the Board was to apply logic to the Zoning Ordinance and noted smaller stores across the street can have a larger sign. He believes independently owned and operated businesses are a benefit to the City and signs are integral to thriving businesses.

Mr. LeMay asked what the size was of his attached sign.

Mr. Holbrook stated that they had decided to do individual letters as the City measures by the outside limit of those letters. From the distance it appears to be a 18' sign, but it is not. He stated he was more concerned with projecting signs. There was a brief discussion with Ms. Eaton of the relative dimensions and scale of signs of nearby businesses and the developer's plans to have enough signage for each.

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

With no one rising, the public hearing was closed.

Mr. David Holden stated that any variance, if granted, would also be subject to the approval of the Historic District Commission.

DECISION OF THE BOARD

Vice-Chairman Witham stated that the Board had the option of separating these or taking them together.

Ms. Eaton made a motion to approve part (a) of the petition with the stipulation that the sign would also be subject to the approval of the Historic District Commission. The motion was seconded by Mr. Parrott.

Ms. Eaton stated that it was in the public interest to support small businesses. There was a glitch in the zoning which made a variance necessary. She asked that her comments in support of the motion for the previous application be carried over to this motion.

Mr. Parrott agreed, stating that this was an attractive and appropriate projecting sign.

The motion to grant (a) of the petition, with the stipulation that the sign would also be subject to the approval of the Historic District Commission, was passed by a vote of 6 to 1, with Mr. Jousse voting against the motion.

Ms. Eaton made a motion for the purposes of discussion to grant part (b) of the petition, which was seconded by Mr. Grasso.

Ms. Eaton stated she wanted to see how the other members might feel about a solid sign, as opposed to putting up letters as a way around zoning.

Vice-Chairman Witham stated that other properties have done a good job of filling the marquee with a letter system without it looking too busy, but he felt this sign was wordy and almost excessive. The other stores had been successful in stretching out their sign and the applicants could be just as successful with that system and provide some consistency to the façade

The motion to grant part (b) of the petition failed to pass by a vote of 0 to 7, with all members of the Board in attendance voting against the motion.

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7) Petition of **Blake Gumprecht and Josephine Lenardi, owners**, for property located at **390 Bartlett Street** wherein a Variance from Article II, Section 10-206 was requested to allow a telephone/internet marketing business in a single family dwelling with two outside employees, and 2) a Variance from Article XII, Sections 10-1201(A)(3) and 10-1204 to allow the existing driveway for both the dwelling and business. Said property is shown on Assessor Plan 161 as Lot 28 and lies within the General Residence A district.

**SPEAKING IN FAVOR OF THE PETITION**

Ms. Josephine Lenardi read the letter she had submitted in support of her petition. In this, she stated that, as of the end of May, she would have 2 employees; that they have no signage or customers stopping by; that they do not sell products at her house; that deliveries are UPS, Federal Express and an occasional local office supply company. She stated her business emits no noise and hours of operation are flexible, usually from 10:00 a.m. to 5:00 p.m. She stated the nature of her work was devising marketing and sales plans for projects in the recording industry and outlined the reasons she wants to work from home. She stated if she could not run the business out of her home, she would be out of a job.

Mr. LeMay noted that her current situation had come to the City's attention via a complaint and asked if she had any specifics on that.

Ms. Lenardi stated she had no idea she was doing anything wrong until there was a complaint by an anonymous person, who apparently did not like the fact that she had a business in her home. In response to a further question from Mr. LeMay regarding noise, she stated there was no noise generated by her business.

In response to a question from Ms. Eaton, Ms. Lenardi stated no complaints about parking had been made to her. She was never told she couldn't park on the street. If they had been told to park in the driveway, they would have done so.

Ms. Eaton explained that the Board had to separate residential uses from business uses and parking is one consideration. They couldn't, unfortunately, consider the impact of whether she had a job or not.

Mr. Parrott stated there was some confusion as to exactly what the business consisted of, what the employees did, and how many people there were.

Ms. Lenardi stated there will be two. When he asked how many there are now, she said there were two and a half. One was leaving.

Mr. Parrott asked if, then, there would only be two plus the applicant working there?

Ms. Lenardi stated there was also somebody who lives at her house and does odds and ends, but is not a real employee.

Mr. Parrott stated he had looked at her website and didn't get a lot of information from it regarding her business.

Ms. Lenardi stated they were a standard small marketing company, promoting cd's to record stores via the telephone and internet. In response to a question from Vice-Chairman Witham, she explained they deal mainly with companies and make stores aware of upcoming releases and where they can purchase them.

Mr. Sanders commented he had driven by to look at the parking and it seemed a busy area. He asked if the driveway was used at all. It seemed a tight fit for all the cars.

Ms. Lenardi stated they can use it for cars, particularly in the winter, when they have it shovelled.

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

Mr. Sam Tombarelli passed out a packet of information to the Board. He stated he and his family had lived at 382 Bartlett Street since 2004 and the applicant has been operating a business out of her home and still was doing so. He stated he wants his neighbor's business to thrive, but not at the expense of his family. With more employees and deliveries, the burden was on surrounding properties, especially his as the properties were so close.

He stated that he wanted to address why the applicant did not meet the criteria for granting a variance. Regarding the public interest, he stated that section of Bartlett Street is already congested, sometimes resulting in a one-lane situation. He had listed in the packet situations where employees' vehicles have caused parking and traffic problems. He read from the Zoning Ordinance the requirements for parking and a section about backing into the street. He stated it was impossible to turn around in the driveway.

Mr. Tombarelli stated that the applicant had created her own hardship by choosing to locate in a residential area where her business would be in violation. He stated that justice would not be done by granting the variance, but would compound the injustice to his family and lower their quality of life. He noted that he had specifically purchased his home in a residential area after fleeing another district where business was infringing.

Citing the spirit of the ordinance, he stated that a residential zone should provide a reasonable environment in which to raise a family. They shouldn't have to deal with extra noise, pick up cigarette butts or compete with employees for parking spaces. He stated that a variance would permanently change the residential footprint of the neighborhood and that, if he wanted to sell his home, a business a few feet away would be a disincentive.

Mr. Randall Leach stated he lived at 358 Thornton Street, two houses down, and they were constantly calling the Police Department for the amount of semi-trucks on the road. He outlined his concerns, citing specific parking and traffic problems. He stated he was the one who called the City to complain about the traffic, noting that when employees go out for lunch, they are making u-turns on the street.

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

Ms. Jean Kennedy stated she lives at 378 Thornton Street and had seen a number of changes in the neighborhood. She noted they had a Holiday Inn across the street and several homes in the neighborhood have had in-home businesses. She didn't believe it was correct to deny this business and they have to look at each individual case. The business had no effect in the evening. Traffic, in general, is a problem as they are a residential area on a truck route.

Ms. Teresa Hill stated she lives at 340 Thornton Street. They love their neighborhood, but hate the traffic. She had no problems, however, with the applicant and her business.

### **DECISION OF THE BOARD**

Mr. Holden stated that it was important to note that the Zoning Ordinance does recognize a Home Occupation I, for which he listed the requirements. The applicant could simply apply to the City for that as a small internet user with no employees. He also described the Home Occupation II requirements, which would need to come before the Board as a Special Exception.

In this case, what is before the Board is a business use in a residential neighborhood and that's why a variance is needed. Parking is clearly an issue and that is a harder standard to meet. If this is a use that fits a business use definition, it should not be in a residential district. As it currently sounds, her use does not conform to either the Home Occupation I or Home Occupation II classifications.

Mr. Jousse made a motion to deny the variance, which was seconded by Mr. Sanders.

Mr. Jousse stated that a variance stays with the property. While this business seems to be somewhat light, if the property was sold, the business use is still there. The property would be commercial and could be turned into just about anything, which would be an encroachment of business into a residential district. He stated that no hardship had been presented with regard to the property. The suggestion had also been made that surrounding property values would diminish if granted.

Mr. Sanders stated that all of the comments made by the public were listened to, but there were some issues. The traffic situation has exacerbated a problem with a business which was already going on. He felt the Board would best serve their responsibilities by declining.

Mr. LeMay stated that home businesses are envisioned by the ordinance so a small scale operation can be operated out of a home if they meet certain parking arrangements among other requirements. In this case, a variance was the appropriate method but clearly parking and traffic are the biggest issues.

Mr. Parrott stated that, with a use variance, the applicant has to prove there was something unique about the property with respect to the land itself. Nothing had been presented to support that. This was a residential neighborhood and owners should have an expectation that there will not activities associated with a business. With respect to parking, this was a narrow, heavily traveled street and, if it were convenient for employees to park off the street, they would have done so. They are, instead, parking on the street, which lends an inappropriate air to a residential area.

He stated that, in a tight residential neighborhood with small lots, the public interest was not satisfied. It was in the spirit of the ordinance to allow owners peaceful use of their house in a residential area. Relative to the value of surrounding properties, he noted that the neighbors speaking in support did not live next door to the property.

Vice-Chairman Witham stated that he did not feel the applicant knowingly operated without approval. The ordinance provides for a Home Occupation I and a Home Occupation II. The Board has to deal with what is before them, which puts the application into a variance category. He thought there were other avenues for the applicant, and the Planning Department could provide some guidance.

Ms. Eaton noted that the applicant should be careful before coming back that they meet the necessary criteria.

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

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8) Petition of **Kyle Engle, owner**, for property located at **24 Hunking Street** wherein a Variance from Article IV, Section 10-402(A) was requested to allow: a) a 5' x 7' storage shed with a 2'± rear yard where 5' is the minimum required, and b) 36.2% building coverage where 30% is the maximum allowed. Said property is shown on Assessor Plan 102 as Lot 10 and lies within the General Residence B and Historic A districts.

SPEAKING IN FAVOR OF THE PETITION

Mr. Kyle Engle passed out a plan of property. He stated that the distance to the property line is not that much, but, with the driveway on one side and a flower bed and patio, there was not much leeway. To limit the impact, they planned to position the shed to back up to that of the neighbor. There was also a 7' high fence as screening. The neighbor to the rear is in support of the proposal. He noted that, to comply with the 5' setback, they would have to move the shed into the tiny lawn area, rendering it useless. He noted that in the South end, most sheds do back up quite close to the property line. He felt it would be attractive and enhance property values.

In response to questions from the Board, Mr. Engle stated that the shed was stick-built and within 2' of the fence. The neighbor's shed was 10' to 11' and is 1 1/2' to 2' from the fence.

**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. Parrott.

Mr. LeMay stated that this was the most practical placement of a shed on a small lot in an area of similar lots. It would be in the public interest to have outdoor equipment contained and property values would not be diminished by keeping the outdoor area neat and clean. On balance, he felt justice would be done in granting the variance.

Mr. Parrott stated that the neighbor's shed was directly adjacent, along with a dividing fence. He felt that a lawn was desirable and options were limited. Most importantly, the requested relief was minimal.

Mr. Witham stated that, clearly, the justice provided to the applicant in granting the variance would not be outweighed by any injustice to others. The applicant had taken care to minimize impact by locating next to the neighbor's shed.

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

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9) Petition of **Crescent Way LLC, owner**, for property located at **129 Crescent Way** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow a 2'± extension of an existing rear dormer with a 19'+ rear yard where 25' is the minimum required. Said property is shown on Assessor Plan 212 as Lot 152 and lies within the General Residence B district.

**SPEAKING IN FAVOR OF THE PETITION**

Mr. Tim Mulcahy stated he was one of the owners of Crescent Way LLC. They were requesting a small extension of an existing shed dormer in the rear of the building. The dormer houses the bathroom but only allows room for a tub where, today, a shower/tub is almost mandatory. He outlined other locations they considered for the bathroom and the reasons they would not work. He noted this was part of a total rehabilitation of both units, but they were able to get a building permit for 127 Crescent Way as that dormer was outside the setback. He stated the neighbors were happy to see the units being refurbished and rehabilitation would benefit the neighborhood.

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

Mr. Grasso stated that it was common in that neighborhood to have dormers extended, as the area was tight. It would be in the public interest to bring a building up to code. Some of the special conditions creating a hardship were the location of the chimney and the layout of the building which made no other option reasonable. It was a minimal request to modernize this bathroom in keeping with the rehabilitation of the unit. The improvement would be in keeping with the spirit of the ordinance as it would be in line with the City’s investment of time and money in the area. He felt property values would benefit.

Mr. Sanders noted the narrowness of the buildings as shown in the photographs. This created a hardship. He stated it was also important to have a bathroom that was utilitarian.

The motion to grant the petition as presented and advertised was 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 9:32 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary