

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

EILEEN DONDERO FOLEY COUNCIL CHAMBERS

7:00 p.m.

June 19, 2007

MEMBERS PRESENT: Chairman Charles LeBlanc, Carol Eaton, Charles LeMay, Arthur Parrott, Henry Sanders, Alternate: Thomas Grasso

EXCUSED: Vice Chairman David Witham, Alain Jousse

ALSO PRESENT: Lucy Tillman, Chief Planner

I. OLD BUSINESS

A) Approval of Minutes – May 15, 2007

A motion was made, seconded and passed by unanimous voice vote to accept the Minutes as presented.

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B) Request for One-Year Extension of Variance granted June 27, 2006 for property located at **1303 Woodbury Avenue.**

After consideration, the Board voted to grant the Variance Extension through June 26, 2008.

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C) Request for One-Year Extension of Variance granted June 20, 2006 for property located at **92 Pleasant Street.**

After consideration, the Board voted to grant the Variance Extension through June 19, 2008.

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**II. PUBLIC HEARINGS**

1) Petition of **TD Banknorth, owner**, for property located at **333 State Street** wherein an Appeal from an Administrative Decision was requested concerning Article IX, Section 10-901(I) and Article I, Section 10-102(A) wherein the City has determined that the green band surrounding the building is signage.

Notwithstanding the above, if the Administrative Appeal is denied a Variance from Article IX, Section 10-901(I) was requested to calculate the sign without the banding. Said property is shown on Assessor Plan 116 as Lot 5 and lies within the Central Business B, Historic A and Downtown Overlay districts.

Ms. Eaton stepped down for this petition.

### **SPEAKING IN FAVOR OF THE ADMINISTRATIVE APPEAL**

Attorney Donald Gartrell outlined the steps leading to the appeal. After a meeting with City officials to discuss objections to their permit application, they decided to file a separate application and come before the Board. Attorney Gartrell stated their approach was to examine the Zoning Ordinance to determine the restrictions on signs and design something tasteful, which would serve their intended purpose but not distract drivers. He stated the applicant was seeking approval for 37.89 s.f. of signage which is replacing a larger number of signs. The remaining signs are directional, which are exempt from the total signage calculation. The total allowed, as they understand the ordinance, is less than 75 s.f. for this building, which includes some signs on all four sides.

Attorney Gartrell stated that the basic issue is the sculpted band, which he depicted as an architectural, structural element of the building. They propose to paint the band a dark green with a light green stripe on the bottom. He stated these were colors identified with this bank. They have designed signs that fit within the height of the band and have the name of the bank, the TD symbol, and an ATM machine identification. The lettering would be white on the green background. He cited Article IX, Section 10-901 of the ordinance, which outlined signs that are permitted and read, as an example, the sign requirements for marquees. He noted there was a marquee over the entrance to City Hall and that words were painted on the front and side. He maintained that, according to the ordinance, you would draw the perimeter around the block lettering and that would constitute the area of the sign.

Attorney Gartrell read the definition of a sign from the ordinance and submitted that if he were to paint the eaves of his house a different color, it would not constitute a sign any more than painting the band constitutes a sign. He stated that the signs on each side can only be read from that side. They identify the business and act as a display to the public. Citing further the definitions of an attached sign and the surface area of a sign, he stated this band was not even applied, but painted on.

He stated that it was with reference to the articles and definitions in the ordinance that their application was prepared and submitted. They added up the surface area of all the signs, outlining the symbols and letters as they would be painted onto the various locations in the building for a total surface area of 37.89 s.f.. Of the 56.82 s.f. of the existing signs that would remain, 20 s.f. is directional and not included in the aggregate signage area. The total square footage of the signs they were proposing, plus those remaining which were not directional, is 71.75 s.f. and they believed that to be well within the limits of the ordinance.

It could be seen from the renderings that the proportionate scale was going to be informative and not distracting. They were not exceeding the display area as limited by the ordinance. They believe the ordinance should be applied without regard to other things that might be conjured up in the future. They feel their signage meets the letter and spirit of the ordinance, which can't anticipate all circumstances.

Chairman LeBlanc stated he had a question for Attorney Gartrell, adding they were only discussing the appeal at that point. He believed that Attorney Gartrell had stated that TD Banknorth uses two-tone green as a corporate identification.

Attorney Gartrell stated he had seen it on other buildings. They have the colors in the signage, but they don't all have the same background.

Chairman LeBlanc stated the question was, is that coloration and the striping a symbol of the bank?

Attorney Gartrell stated he guessed that was the stretch that he felt the City staff had made, but if you look at the definitions, it seemed to him they were talking about the perimeter of the letters or symbols that constitute the display.

Chairman LeBlanc stated he disagreed.

Mr. Sanders asked if this was representative of what they had or intended to do with other bank buildings. Where might it exist at the present time and how many other buildings demonstrate this signage.

Mr. Paul Tripp of Classic Signs stated he had just completed a job in Manchester with banding all the way around and an apple green stripe. According to Manchester definitions, only letters and symbols were included in the signage.

Mr. Gregory Torres, an official from TD Banknorth, stated this was the direction they were going in as they refurbished buildings. There were a lot in progress, but they only have the one example completed. Their brick buildings do not lend themselves to banding.

Mr. Parrott noted to Mr. Tripp that in their representations they showed the banding with the lettering on it. He asked why, if these were not signs, they were putting them on a representation by a sign company and on a sign company letterhead.

Mr. Tripp replied that, after the painter came and painted the band, they would add their sign. Design-wise, the bank wants to see a full representation so he provides it as a service so they can see the final look. If there were awnings on the building, they would have added them also.

Mr. Parrott stated the color scheme of the building was red brick with cream. The banding was not part of the brick. The purpose of a sign is to draw attention to what's in the building and he quoted from the definition in the ordinance, which included "any name, identification..". If this was not an identification of Banknorth, then what was it?

Mr. Tripp responded it was a brick building, with a tan marquee and a green stripe.

Mr. Parrott stated it was clear to him that it was not part of the decoration of the building but was to draw attention to the function of the building and were not the two colors designed to identify the building as a TD Banknorth building?

Mr. Tripp replied that a corporation was allowed the use of a corporate color and they could, in fact, paint the whole building that color.

### **SPEAKING IN OPPOSITION TO THE ADMINISTRATIVE APPEAL**

No one rose to speak.

### **SPEAKING TO, FOR OR AGAINST THE ADMINISTRATIVE APPEAL**

Attorney Gartrell stated he would just like to offer pictures of the building as it was. There are signs applied to that band that have lettering and coloring identifiable as Banknorth. The sign, in its entirety does not mean the background. Mr. Tripp was correct that, if they went out there today and painted the stripe on the building, that would not require a sign permit. The question was the way they proposed to put the lettering and symbols on top of it.

Chairman LeBlanc stated that the question was that an administrative official of the City had determined that he or she could not make that determination, but should come to the Board to determine what should happen. Then, if this appeal fails, then the Board would have to take up the variance.

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

### **DECISION OF THE BOARD**

Mr. Parrott made a motion to deny the appeal, which was seconded by Mr. Grasso.

Mr. Parrott stated this was a case where the administrative official was presented with something unusual. They considered the totality of words against a background and determined that the band on which the words were written, which was clearly distinguished in color from the rest of the building, in totality constituted signage. He felt that was a reasonable conclusion based on the wording in the ordinance.

Mr. Grasso stated he agreed with Mr. Parrott's comments and had nothing to add.

Mr. Sanders stated it was difficult to argue other than to say it constitutes a sign.

Mr. LeMay stated that the design was as much a corporate logo as the "golden arches" and was intended to be an indication to the public. Whether painted on the building as a strip or something purchased from a sign company, it was still a sign.

The motion to deny the appeal was passed by a unanimous vote of 5 to 0.

Chairman LeBlanc then read the portion of the petition requesting a variance.

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

Attorney Gartrell submitted that it was within the authority of the Board to grant an area variance to permit the signage that has been proposed without calculating the entire band of area. He again read relevant passages from the ordinance dealing with signage and drew attention to the illustrations before the Board, pointing out that there were whole sections with no sign on them. Those sections should not be part of the calculation. He stated that the conclusion that the color scheme constitutes a display, and is therefore a sign, has not been literally applied throughout the City. They could paint a portion of a building a contrasting color, an eave or a band of trim, and it would not constitute a sign even if it was a color that one might identify. He also stated that signs in a showroom window do not count as a sign.

Attorney Gartrell stated that there would be no diminution in property values. There was no indication that it was not in the spirit of the ordinance to have tasteful signs in dimensions that are less than allowed for display signs in the ordinance. The ordinance encourages signs that will be informative to public and these signs conform to the sign standard as articulated in the ordinance. He felt what was being done was very tasteful in terms of using colors that are associated with the business to draw attention to the signs that are painted on the building. He didn't feel it was creating a hazard to the traveler or a nuisance to the neighbors and would, therefore, not be offensive to the purposes of the ordinance.

### **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. Sanders made a motion to deny the variance, which was seconded by Mr. Parrott.

Mr. Sanders stated that the variance would not be in the public interest and a favorable response to this would likely proliferate. He added that the definition for signs in the ordinance had no such intention and he didn't feel this would serve the best interests of the City. The zoning restriction does not interfere with the use of the property as there were excellent opportunities for this bank to provide signage that will be more than adequate without this sign. They had discussed other ways and opportunities for the applicants to achieve their objective. He didn't feel that surrounding properties would be affected.

Mr. Parrott stated that, with respect to the tests that we have to apply for a variance, the second is that special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship. He didn't perceive any unnecessary hardship, nor had they heard even a claim of such from the applicant. The Boccia analysis states an area variance is needed to enable the applicant's proposed use of the property, given the special conditions of the

property. He hadn't heard that the applicant can't operate without this variance. He felt that the special conditions of this property were entirely favorable. The building does not blend into a row of similarly situated structures. It sits out surrounded only by parking lots and streets and is almost impossible to miss. His conclusion was that there were no special conditions associated with the property that were negative to the property and would argue for a variance.

Mr. Parrott continued that the benefit sought by the applicant could be achieved by another reasonably feasible method. In his judgment, the signs with respect to the words, less the banding, conveyed the needed information. He agreed with Mr. LeMay that these distinctive colors are associated with this bank and to say that it's not to draw attention or anybody could paint the building is beside the point. The whole building is not a sign. The variance does not pass the tests.

Chairman LeBlanc stated that he would allow that the request would not be contrary to the public interest and values would not be diminished but if one part of the five-part test fails, then the variance fails. The colors are indicative of the corporation in the building and that makes them part of the sign. Accordingly, the request was not consistent with the spirit of the ordinance.

The motion to deny the request was passed by a unanimous vote of 5 to 0.

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Ms. Eaton resumed her seat.

Chairman LeBlanc gave preliminary notice that the petition for 824 State Street had been requested to be postponed until the next month.

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2) Petition of **Two Girls Realty LLC, owner**, for property located at **261 South Street** wherein the following were requested: 1) a Variance from Article II, Section 10-206 to allow the building to be used as a catering kitchen in the rear portion and in the front portion: retail sales of food products, beer and wine, as well as, food prepared in the catering kitchen to be sold and consumed on premises (counter with 5 stools inside). Products being sold would be baked goods, prepared sandwiches, salads (for breakfast, lunch and dinner) and prepared meals to go with the hours of operation being 7 days a week. The catering kitchen would operate from 6AM to 6PM and the store/food sales would operate 7AM to 7PM adjusted to summer hours of 9PM. 2) a Variance from Article XII, Section 10-1204 to allow no parking to be provided where conforming onsite parking spaces are required. Said property is shown on Assessor Plan 111 as Lot 34-2 and lies within the General Residence B and Historic A districts.

**SPEAKING IN FAVOR OF THE PETITION**

Mr. Steve Sanger stated that this had been a neighborhood store for 75 to 100 years and outlined some of its history. He noted that his wife ran a catering business out of there for 12 years and it was recently a wine and cheese shop. They had considered other uses, but, in consulting with neighbors, have opted to try and get back a food shop, which would be a nice addition to the neighborhood. He stated that one of the neighbors' concerns was that it would cause traffic but he felt a lot of people would walk to the store. He cited passages from the City's master plan about businesses in residential areas encouraging walking and about encouraging development in city neighborhoods which would not require new infrastructure. He felt they were in keeping with those goals.

In response to questions from the Board, Mr. Sanger stated that their only parking spaces would be two or three along the side of the building. Employees would be encouraged to park away from the store. With regard to odors, the stove would be the same one that has been used for 12 years and there were no plans for a fryalator. There would typically be four people working and with all five stools occupied, there would be a maximum of nine people in the store. He confirmed the hours of operation would be 6:00 a.m. to 6:00 p.m. in the kitchen and 7:00 a.m. to 7:00 p.m. in the front, extending to 9:00 p.m. from June through August or September.

Chairman LeBlanc cited a letter which had been received from an abutter objecting on the grounds that 5 stools could mean ten or more people hanging around at the same time. If people come or drive up and stop and talk with someone there, it could create a traffic problem. He asked if that issue could be addressed.

Mr. Sanger stated again that neighborhood businesses would encourage people to drive less and they would put up a sign asking that people not idle in cars. The 5 stools was a small number and were there as a courtesy. They didn't feel that translated into an unruly crowd. While not a restaurant, people had always congregated there. In response to further questions, he indicated that, when a catering job went over the hours, they would come back quietly and just drop off materials or unload it the next day. They traditionally took smaller jobs.

Mr. Parrott asked if there would be transportation of liquor and Ms. Mazzari stated they had never done so and would not be doing so.

Mr. LeMay noted it was difficult to put on restraints so that it didn't become a local beer store but would stay as it had been described.

There was a brief discussion of the history of the operations in the building.

Speaking in support of the petition were Mr. Steve Barndollar, of 120 Ridges Court, and Mr. Peter Vandermark, of 86 Ridges Court. Their points included the following: that parking would be better than with the previous businesses; that the limited parking precluded a number of tenants; that this did fall in with the master plan and many would walk there.

Mr. Bob McElwain, of 259 South Street, stated he liked the concept of a neighborhood store and was glad there would be no serving of liquor. His concerns were the closing at 9:00 p.m. and whether future managers would be as considerate as the current owners.

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

Mr. Bob Hassold, of 15 Mt. Vernon Street, Ms. Boufford, of 283 South Street, Mr. Allan Nelson, of 283 South Street and a resident at 251 South Street spoke in opposition. Their concerns included the following: that no wine or liquor be consumed on the premises; that there be no tables outside; that there had been cooking on outdoor grills in the past; parking and the hours of operation, particularly the 9:00 p.m. closing; that the selling of beer changes the character of the store.

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

Ms. Mary McElwain, of 259 South Street stated they thought the former operation was a wonderful gathering place and she would like to see it continue. The previous hours were reasonable. If the petition were granted, she wanted what specifically had been granted to be clear for future occupants. Her main issue was noise.

Ms. Natalie Hassold, of 15 Mt. Vernon Street would prefer the hours of operation to be 7:00 a.m. to 7:00 p.m. She had some concerns about delivery trucks and the disposal of waste. There were good aspects of the plan, but she would want to know who was going to run it and ensure compliance.

Mr. Sanger stated that obtaining the variance now would improve the prospects of getting a tenant. They would still be in control of the building and intended to keep a high quality store. Regarding hours, the earlier hour was to prepare for the 7:00 a.m. opening. They were willing to negotiate on hours and could change the closing to 8:00 p.m. in the summer, 7:00 p.m. the rest of the year.

### **DECISION OF THE BOARD**

Noting that the Board can grant less than was requested, Chairman LeBlanc stated that the change to the application would be that the closing in the summer would be 8:00 p.m. instead of 9:00 p.m.

Ms. Eaton made a motion to deny the petition, which was seconded by Mr. Grasso.

Ms. Eaton stated she couldn't get past the fact that stools means a restaurant. This was a school area and residents already have a problem with parking. In a take-out operation, people went in and came out. She noted the master plan envisions businesses, but not that variances would be needed to support it. She did not feel it was an appropriate use because of the parking and traffic.

Mr. Grasso stated that a variance would be contrary to the public interest. The residential zoning was there to ensure that neighborhoods stay residential. Why the property could not



be used as residential had not been heard. He felt, with South Street a public road, the rights of others would be infringed on. Overall, he agreed with Ms. Eaton’s comments.

The motion to deny the petition was passed by a unanimous vote of 6 to 0.

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3) Petition of **David Kish, owner**, for property located at **824 State Street** wherein the following are requested: 1) Variances from Article II, Section 10-206(2) and Article XII, Section 10-1204 to allow no parking to be provided where 6 parking spaces are required for the conversion of an existing building with 3 dwelling units to 4 dwelling units, and 2) Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) are requested to construct an 8 ½’ x 12’ deck with a 5’± left side yard where 10’ is the minimum required. Said property is shown on Assessor Plan 145 as Lot 84 and lies within the Apartment district.

The applicant had requested that this petition be continued and it was moved, seconded and passed by unanimous voice vote to postpone the petition to the July 17, 2007 meeting.

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4) Petition of **Randle W. Wright and Jane A. Wright, owners**, for property located at **30 Sudbury Street** wherein the following were requested to construct a 4’ x 8’ shed: 1) a Variance from Article IV, Section 10-402(A) to allow a 4.83’± right side yard where 5’ is the minimum required, and 2) a Variance from Article III, Section 10-302(A) to allow 40.4%± building coverage where 35% is the maximum allowed. Said property is shown on Assessor Plan 138 as Lot 23 and lies within the Apartment district.

**SPEAKING IN FAVOR OF THE PETITION**

Randy Wright stated that he had started to build a shed on his deck because he had not realized that a variance would be needed. He addressed a letter sent by an abutter, which had raised an issue of the lot line, stating the issue should be the shed. If there were a change in the lot line, he would ask for 6” more of relief. He felt the impression had been given that the area in question was a narrow alleyway, but it was not. They were building on an existing deck, what he called a platform, which he had built to cover an area where water drained down through the property. The shed would use an existing privacy fence as part of its walls. He passed out pictures showing the location of the proposed shed and its relationship to the neighboring property.

Mr. Wright stated that granting the variance would not be contrary to the public interest. The shed would be shielded by the existing fence and the access can’t be seen from the street or yard. In terms of special conditions, there was no place to store items such as lawn equipment and this would keep them out of view in a structure that would be tasteful and appropriate. With regard to the proximity to the neighbor, he noted that the houses in relationship to each other are existing. He listed several alternatives they had considered and why they had to be

rejected. He believed that variances exist for his type of situation. He stated that they had received an award for restoration and this structure will not diminish property values.

**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. He stated the petition should be granted for the following reasons:

- The shed will be in the back and out of the public view.
- The lot is narrow and placing the shed on the existing deck will preserve the limited green space.
- This was the most feasible method to solve the problem of needed storage.
- The proposal is well thought out and should not negatively impact the value of surrounding properties.

Mr. Sanders stated that the shed would inconspicuously serve a utilitarian purpose. While there may be some issues with a neighbor, the Board’s concern was diminution in the value of surrounding properties and he didn’t feel this was the case.

The motion to grant the petition as presented and advertised was passed by a unanimous vote of 6 to 0.



5) Petition of **William E. Dooley and Whitney S. Dooley, owners**, for property located at **140 Essex Avenue** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow a 20’ x 20’ two story addition with an 8’± right side yard and a fireplace bump-out with a 7’± right side yard where 10’ is the minimum required in each instance. Said property is shown on Assessor Plan 233 as Lot 65 and lies within the Single Residence B district.

**SPEAKING IN FAVOR OF THE PETITION**

Mr. Bill Dooley stated their needs had increased over the 7 and a half years they have owned the property and they would like to build an addition off the rear of house where they now have a four season sun porch. The hardship was that the lot was very narrow, only 50’ wide with 10’ setbacks. The main part of the home was within 7’ of the setback. They would extend back the existing wall so the addition would be no closer to property line. He presented a petition of support signed by all of the immediate neighbors, including the direct abutters. He noted they had considered other options, but the construction costs would be considerably higher. He didn’t feel the surrounding property values or the public interest would be negatively affected.

**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 Ms. Eaton.

Mr. LeMay stated it would be in the public interest to continue a residential use. Regarding hardship, this was a minor encroachment on a lot with an already narrow side yard. There was enough room in the back to accommodate the addition without encroaching on green space. He stated it was in both the spirit of the ordinance and substantial justice to allow minor variations like this. He didn't feel there would be any diminution in the value of surrounding properties.

Ms. Eaton stated that the narrow lot and existing building prevent any other configuration, noting there was already an encroachment. There was a long yard so the lot coverage was not an issue. The addition would make the house more livable and maintain a residential use. She felt the request met the five requirements for a variance.

The motion to grant the variance as presented and advertised was passed by a unanimous vote of 6 to 0.



6) Petition of **Jennifer Ramsey, owner**, for property located at **145 Porpoise Way** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) and Section 10-402(A) were requested to allow: a) a 144.63 sf one story addition with a 4' 6 7/8"± rear yard where 25' is the minimum required, b) a 4' x 11'1" one story addition with an 11'6"± rear yard where 25' is the minimum required, c) a 6'x 11' 3/4" pergola with an 8'± rear yard where 25' is the minimum required, d) an 8'6" x 11' shed with a 2'2"± rear yard and a 1'6"± left side yard where 5' is the minimum required for each; and, e) a 6' x 10'4" one story addition and a 6' x 14'2 1/2" open porch having all additions create a building coverage of 34.7% where 30% is the maximum allowed. Said property is shown on Assessor Plan 212 as Lot 70 and lies within the General Residence B district.

**SPEAKING IN FAVOR OF THE PETITION**

Ms. Jennifer Ramsey described the additions and changes she would like to make to her non-conforming, corner lot, noting that the existing shed would be rebuilt. She distributed photographs of other homes in the vicinity which had similar additions and features. She was trying to keep in the spirit of the surrounding neighborhood. She had talked to the immediate neighbors and submitted a number of signed documents in support of her petition.

Mr. Sanders asked if there had been any negatives from the immediate neighborhood, in particular the house on the crescent.

Ms. Ramsey stated that one of the letters in support was from that neighbor.

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

No one rose to speak

Ms. Cristy Kiedaisch, of 197 Concord Way, stated she was on the Board of the Atlantic Heights Association. She submitted a letter which had been sent to the Planning Board in May outlining the issues for the Association. In obtaining their inclusion in the National Historic Register, they had run into a problem with some homes that had been severely altered and wanted to prevent that happening in the future. To make some of the homes livable may require some adjustments, but they want to also preserve the character of the neighborhood.

### **DECISION OF THE BOARD**

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

Mr. Sanders stated the property was in a very compact neighborhood with a lot of work going on. Little could be done on this property without coming for a variance and this would provide significantly improved living conditions. He noted a shed was needed for maintenance. He felt the increased building coverage percentage was relatively insignificant and the project would not be contrary to the public interest. He stated that the remaining criteria would all be met.

Mr. Grasso stated he had seconded for discussion only but would not support the motion. He wasn't convinced that conditions existed that created a hardship. It was a very crowded area and this would not be in the spirit of the ordinance which requires certain setbacks.

Ms. Eaton stated she believed the lot coverage would be significant and a number of these lots were already overdeveloped.

Mr. Parrott stated that applicants were supposed to follow the principle of minimal relief and it was hard to believe that was the case here. There had been no discussion about why the work was needed nor of the hardship in the land itself, which was needed to grant a variance. The additions would make small setbacks even more of a concern.

Mr. LeMay stated he was conflicted as he could see in the plan things that improve the quality of life for the residents without intensifying the use of the property. He noted there would be no additional people. There were, however, other items of concern.

Chairman LeBlanc stated he was concerned that the 4.7% increase in lot coverage was significant on a small lot.

The motion to grant the petition failed to pass by a vote of 1 to 5, with Ms. Eaton and Messrs. Grasso, LeBlanc, LeMay, and Parrott voting against the motion.

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7) Petition of **Society for the Protection of Forests, owner, Shoals Marine Lab, applicant**, for property known as **Creek Farm located off Little Harbor Road** wherein Variances from Article II, Section 10-206 and Article XII, Section 10-1204 were requested to allow the 1st floor of the Carriage House to be used by Piscataqua Challenge for educational classes, boat building, sailing, rowing and related crafts in a district where such uses are not allowed. Said property is shown on Assessor Plan 203 as Lot 8 and lies within the Rural district.

Ms. Eaton stepped down for this petition.

Mr. David Bellantone stated he was the Director of Piscataqua Challenge who would be working with Shoals Marine Lab and the Society for the Protection of New Hampshire Forests to add educational classes in boatbuilding, and related crafts to the existing building. He outlined their Mission Statement and their plans for the summer, which included rowing and sailing lessons, as well as boatbuilding. They would like to bring communities together in seamanship and take part in an international challenge.

In response to questions from the Board, Mr. Bellantone confirmed the operation would be on the ground floor of the Carriage House and there was adequate space for them to build a 38’ 18th century replica boat as shown in the packet. The organization consisted of himself and three other educators interested in providing adventure based learning to youth and youngsters at risk. They were not yet a registered non-profit, so liability would be assumed by the Learning Skills Academy, which included their partner, the Dewey School. No one would be residing on-site.

After further questions, Mr. Bellantone described the construction of the boats, which, he stated, did not include fiberglass. He stated he had been working with the Director of Atlantic Challenge International for the past 5 years and the future looked good. The Shoals Marine Lab had welcomed them as part of their mission . They intended a year-round operation, with spring, summer and fall the most active.

Mr. Paul Doeschler stated he was with the Society for the Protection of Forests. He stated the building was not usable as office or living space, but was well suited for this type of activity. There were two large garage doors on the building and they had recently constructed an additional public parking area so there were no problems with access. The public would use the space in front of the building, with the participants parking further away.

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 grant the petition as presented and advertised, but with the stipulation that anything constructed would be of predominantly wood construction, particularly the basic structure. The motion was seconded by Mr. Grasso.

Mr. Parrott stated that there were no close neighbors and it would be in the public interest to provide special programs such as this. This was a reasonable use of the property, which carried the special condition of its unique setting. The use would be in keeping with the zoning ordinance as it was a large property away from residential uses and the use was relatively benign. He couldn't see any injury to the public or private rights of others by the program and there would be no benefit in denying the petition. With the construction work done indoors and the stipulation, there would be no negative effect on surrounding properties.

Mr. Grasso stated that they had heard testimony that there were no other uses for this building and this would be an excellent use, providing a nice opportunity to seacoast area youth.

Chairman LeBlanc stated that the primary stipulation put on the property when a variance was granted to the Society was that such accessory uses could include a number of specified activities and events for the benefit of the local community and he felt this would fall under that umbrella.

After he restated the motion, and before the vote, Mr. Bellantone asked if he could use epoxy and Chairman LeBlanc stated that he could.

The motion to grant the petition with the stipulation that anything constructed would be of predominantly wood construction, particularly the basic structure was passed by a unanimous vote of the sitting members of 5 to 0.

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**III. ADJOURNMENT.**

The motion was made, seconded and passed to adjourn the meeting at 9:55 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary