

**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 17, 2008

MEMBERS PRESENT: Chairman Charles LeBlanc, Vice Chairman David Witham, Carol Eaton, Thomas Grasso, Alain Jousse, Alternates: Derek Durbin, Robin Rousseau

EXCUSED: Charles LeMay, Arthur Parrott

ALSO PRESENT: David Holden, Planning Director

I. OLD BUSINESS

- A) Approval of Minutes – May 20, 2008
May 27, 2008

A motion was made, seconded and passed to accept the Minutes as presented.

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**II. PUBLIC HEARINGS**

Chairman LeBlanc noted that both alternates would be sitting as voting members for the entire meeting.

- 1) Petition of **Old Tex Mex, LLC, owner**, for property located at **3510 & 3518 Lafayette Road** wherein the following are requested: 1) a Variance from Article II, Section 10-206 to allow a proposed 60' x 72' addition with a 20' x 72' office mezzanine for use by trades contractors in a residential district where such use is not allowed, 2) a Variance from Article III, Section 10-301(A)(8) to allow the proposed addition with a 55'± front setback where 105' is the minimum required; 3) Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) to allow 16.8% building coverage where 10% is the maximum allowed, and b) 46.7% open space where 50% is the minimum required; and, 4) a Variance from Article XII, Section 10-1201(A)(3)(c) to allow off street parking and access way 20' from a residential property line where 50' is the minimum required. Said property is shown on Assessor Plan 297 as Lots 7 & 8 (to be combined) and lies within the Single Residence A district.

Mr. Grasso stepped down for this petition

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

Attorney Peter Loughlin stated he was there that evening with Mr. Mike Brown representing Old Tex Mex and Mr. Serpa from MSC Engineering. He noted the length of the property history in the departmental memorandum which stemmed, he felt, from the fact that the property had been incorrectly zoned for over 30 years. There were 5 lots, including this property, that have been zoned single family residence, for some reason, requiring one acre lots and yet the two subject properties had been used commercially for probably 30 years, the Wren's Nest next to it for 40 years. While it looked from the advertisement that they were requesting a lot of relief, that stems from the way that the ordinance was written.

Attorney Loughlin stated that the building coverage was 16.8% where 10% was permitted. For open space, they had 46.7% where 50% was the minimum required. This, however, was solely because that was what was required in a residential zone. In a business zone as it had always been used, they would more than satisfy the lot coverage and open space requirements. The 105' setback was something that every property owner deals with and, as could be seen from the application and the materials submitted, the addition was well behind most of the buildings that are on that road.

Attorney Loughlin stated that the application was basically to allow a 60' x 72' expansion of the warehouse. The paving in the front of the building would come out so there will just be lawn in front of it and no curb cut so that should be an increase in safety. Also, in terms of safety, this use was much less intense than either the previous restaurant or antique shop.

Attorney Loughlin stated he would quickly go through the conditions as he had laid them out thoroughly in his letter. There will be no diminution in the value of surrounding properties from any of the uses. In fact, the appearance and flow of traffic in the area will improve, which should increase the value. As that term has been more recently defined, it is not going to have any adverse impact on the public good or on the neighborhood. Regarding substantial justice, he could see no real benefit to the public by restricting the properties to residential uses. The spirit and intent of the ordinance in separating uses would not be frustrated by this application. Regarding unnecessary hardship resulting from denial, the mis-zoning created the uniqueness in the property. They don't know how it came about or why it was left that way, but that was why relief was required from this Board. He reaffirmed that they met the criteria, under both the Boccia and Simplex standards, as had been outlined in his letter, but would welcome any questions.

Noting that the addition would be further back than the existing building, Mr. Jousse asked what the existing setback was from the original building to the front property line.

Attorney Loughlin stated that the front of the addition would be pretty much on a line with the rear of the existing building. He stated that Mr. Serpa from MSC Engineering indicated it was approximately 43'.

Ms. Rousseau asked if she was correct in understanding that they were combining two lots and were going to construct an addition onto a building with a commercial use and also maintain a single family residence on the lot. Attorney Loughlin stated she was correct.

Mr. Mike Brown stated that he was one of the owners of the property and wanted to speak a little further about combining the two properties and their plans. They were going to side the addition so that it would integrate well with the existing building and look attractive. They will redo the landscaping when they do the driveway. Currently, the tenants living in the house take care of the landscaping, but they will take it over. There will also be landscaping along the exit and entry corridors. He indicated that he had shown the plans to all the neighbors and has written or verbal support from all.

Mr. Jousse asked what the triangular shaded area was at the back of the building, as indicated on the plan. Mr. Serpa, of MSC Engineering, stated that area would be striping to avoid people parking in that area.

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

With no one rising, the public hearing was closed.

### **DECISION OF THE BOARD**

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

Ms. Eaton stated that this was like an island of residential zoning within a commercial area, which had the effect of spot zoning, and it was probably an oversight that it was left as a residential area. The use has been commercial for quite a while and the proposal would meet what would be the requirements if it were appropriately zoned commercial.

She stated that the variance would not be contrary to the public interest because the use was compatible with the area. The area variance was needed to enable the applicant's proposed use of the property given the special conditions of the property. She felt the special conditions were the zoning itself, which was probably inappropriate for where the property was and what surrounded it. She felt it was apparent that the benefit sought by the applicant could not be achieved by some other method reasonably for the applicant to pursue other than an area variance. The spirit of the ordinance would be upheld as it wasn't clear why this had been zoned residential. Probably it had predated most of the businesses around it. Substantial justice would be done. She didn't feel there would be any benefit to the public in denying the variance and the owner would be able to use his property in what was probably the highest and best use for it. She also did not see the value of surrounding properties being diminished because they had similar uses.

Mr. Witham stated that they do have situations where commercial zones abut residential zones and they were very careful that residential zones not get chipped away, but he saw this as a very different situation and he would be hard pressed to define this lot as a residential zone, especially Single Residence A. Everything about it was commercial and he didn't feel there was disruption to any established residential character or loss of valuable residential area. The first variance was essentially allowing the continuance of an existing use on the property. The second variance dealt with the setback from Route One, which essentially was the same for all properties with the exception of Wal Mart. He noted that what they were proposing to build set further back on the property that what currently exists. Regarding the lot coverage and open space standards, the

requirements were for Single Residence A. If one were to apply the proposal to a business district, it would meet all the criteria, so that was acceptable. He stated that the last variance dealt with parking 20' from a residential property line. Even though it was 20' away, that property line separates a commercial use which had been there for a number of years. He concluded that, even though it seemed like the applicants were asking for a lot, considering the context of this property, he felt it was a reasonable request.

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

Mr. Grasso resumed his seat.

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2) Petition of **Michael J Pasternak and Judith A Pasternak, owners**, for property located at **663 State Street (663 State Street Condominium Association Unit 1)** wherein a Variance from Article III, Section 10-302(A) was requested to allow a 246 sf irregular shaped deck with a 1'± right setback where 10' is the minimum required. Said property is shown on Assessor Plan 137 as Lot 14 and lies within the Apartment district.

SPEAKING IN FAVOR OF THE PETITION

Mr. Mike Pasternak stated he was the owner of unit 1. They wanted to build a deck replacing an irregularly shaped brick patio approximately 9' x12' with a questionable supporting wall. The deck would be aesthetically and structurally an improvement and would be designed to be in keeping with, and enhance, the area. It would be more usable and, he felt, safer. The deck would be built right over the existing patio and then expand into a 12' x 18' area. He submitted some photographs that would give an idea of what they were trying to do.

Chairman LeBlanc asked how far the stone patio was from the house and how far the deck would come out. Mr. Pasternak replied that the patio, at its most distant point, was about 9' which curved around to 4' or 5' at the doorway entrance. The deck would come out 12', then extend into a jog to fit the contour of the house, for a total width of 18'.

Mr. Jousse asked where the property line was in relation to the wall with a rail shown in the photograph. Mr. Pasternak stated that where there was a car parked on the far side of the wall, that was the property line.

When Mr. Jousse asked how far the dwelling was from the property line, Mr. Pasternak replied that it was approximately 5' and confirmed that the deck would be 1' from the property line, built exactly over the existing brick patio.

In response to questions from Mr. Witham, Mr. Pasternak stated that the doorway shown in the picture at the rear was to a common laundry area. Similarly, the patio was a common area. He confirmed there was a right-of-way over the abutting property, which led into a parking lot for 4 cars and that the 1' setback only abutted a parking lot for the other building.

Ms. Eaton asked what the purpose was of the jog which went around the side of the building. Mr. Pasternak stated that was the area for trash cans. The grass area turns muddy and they need a dry place to put them.

**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

Ms. Rousseau made a motion to grant the petition as presented and advertised, which was seconded by Mr. Durbin.

Ms. Rousseau stated that the variance would not be contrary to the public interest. There had been no abutters speaking against the petition and the neighborhood would not be disrupted. This was not a lot of space. The special conditions were that this was a very tight space in the downtown area, which the property owner was looking to improve. Literal enforcement of the ordinance would result in an unnecessary hardship. This would be an improvement to the property. She stated that the benefit sought by the applicant could not be achieved by some other method reasonably feasible to pursue. Considering the spirit of the ordinance, they like to give abutters space, but this was in a tight downtown area with the setback coming against a parking lot. She stated that the deck was consistent with what was there. She felt that justice would be served by allowing the property owner to do what they liked and improve their property. There was no evidence that the value of surrounding properties would be diminished.

Mr. Durbin stated that the impact, and corresponding relief required, was minimal. If anything, it would probably improve this property to have a deck to use as a common area.

Mr. Grasso noted that this petition had been advertised as unit 1, but the applicant mentioned it was a common area for all four units and asked if this presented any problem.

Chairman LeBlanc stated it was in the common area to begin with.

Mr. Jousse stated he would not support the motion. If the deck were in line with the dwelling, there would be no problem, but this was really encroaching too close to the property line and could be made smaller. They were looking for the maximum space and could add the 4' to the other end of the deck.

Mr. Witham stated he had some of the same concerns, but would reluctantly support. He was conscious of social spaces being too close, but this would abut parking lots so he didn't see any negative impact. It was a little ambitious, but reasonable. He could see why the deck was extended to the walkway on that side.

Chairman LeBlanc stated there were alternatives which would provide the same amount of space without a variance and the variance goes with the land. He would not support the motion.

The motion to grant the petition as presented and advertised was passed by a vote of 4 to 3, with Messrs. Grasso, Jousse and LeBlanc voting against the motion.

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3) Petition of **Evander F. Hawes III and Mary Lin Hannay, owners**, for property located at **415 Union Street** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow a 14'6" x 15' 10" 2<sup>nd</sup> story addition over existing one story addition with a 2'6"± left side setback where 10' is the minimum required. Said property is shown on Assessor Plan 134 as Lot 9 and lies within the General Residence A district.

**SPEAKING IN FAVOR OF THE PETITION**

Mr. Bob Maranhas stated he was the contractor for the project, which was to build a second story over the existing kitchen area at the back of the home. He passed out some additional copies of photographs showing the proximity of the home to the house next door and also a letter from one of the direct abutters indicating that they had no objection to the proposal. He stated that one corner of the property line is angled to the back, so the houses do sit on top of one another.

In response to questions from Mr. Jousse, Ms. Eaton and Chairman LeBlanc, Mr. Maranhas confirmed they were going to take the roof off the little addition and go straight up. They would encroach no further into the setback. Currently there were two bedrooms and two baths and the addition would be for a bedroom/office. When Ms. Eaton stated, then, it would be three bedrooms, Mr. Maranhas stated, "semi." The tree which was jointly shared with the neighboring property would be limbed so it would not hang over.

**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 request was really very minimal, with the footprint not enlarged in any way. The present building was close to the property line so anything done on the left would require a variance. He stated that granting the variance would be in the public interest. Special conditions do exist including the fact that the dwelling was on a narrow lot close to the property line and it would be unreasonable to ask the owner to move the building. For these reasons, there was no other method to pursue. He stated that the spirit of the ordinance would be served and justice done by granting the request. Nothing had been presented as to the diminution in property values.

Mr. Grasso stated that he agreed. This was a 6,500 s.f. lot with a home to one side of the lot. The applicant was simply proposing to build upward with no further encroachment.

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

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4) Petition of **Six Hundred Six Realty Trust, C. J. Annis and D. I. Rolde, Trustees**, for property located at **606 Greenland Road** wherein a Special Exception as allowed in Article II, Section 10-206(22) was requested to allow 3 horses to be kept on the property in a district where such use is allowed by Special Exception. Said property is shown on Assessor Plan 258 as Lot 3-1 and lies within the Single Residence B district.

Mr. Jousse made a motion that the hearing be postponed until the following month in view of the fact that the Board had been handed a lot of paperwork at the last minute and did not have time to review it. Mr. Grasso seconded the motion.

Mr. Witham stated that, while he could see Mr. Jousse’s point, people submitting letters in favor or opposition at the last minute should not be a means to delay the hearing. He had skimmed the letters and most say the same thing, and probably, most of the submitters were there that evening to present their viewpoint. He didn’t feel that reading the letters would provide a lot of information they would not receive that evening. He wasn’t comfortable with sending people home to come back next month. They had all they needed to move forward.

Mr. Holden stated that, when the materials are submitted, they are submitted by the applicant which should be on a timely basis and an abutter is not informed that they have to get it in by a certain time. He noted that a lot of the people making submittals were there and could speak to their issues.

The motion to postpone the hearing until the following month was defeated by a vote of 2 to 5, with Ms Eaton, Ms. Rousseau and Messrs. Durkin, LeBlanc, and Witham voting against the motion.

SPEAKING IN FAVOR OF THE PETITION

Mr. Craig Annis stated that he would like to review the packet they had submitted. He noted that they had voluntarily submitted some conditions in their plan which were not required for a Special Exception. These were for themselves and to alleviate some of the concerns people might have. He wanted to point out that, in Article II, Section 10-206(21), it basically talks about the permitted uses in Single Residence A for farms growing fruits, vegetables, hay and other produce. Based on the ordinance, paragraph 22 would allow the keeping of farm animals with a Special Exception and he read the listed conditions. They had also consulted the Animal Control Officer who had responded in a favorable manner.

Mr. Annis stated that they had put a lot of time and effort in looking at this and other non-criteria issues and how they would address them was detailed in the packet. One of the conditions that they had imposed on themselves was to be specific as to the type of animal and the quantity of farm animals. The presence of their two horses more than 100’ from adjacent properties would not create a hazard in terms of fire and there was a pull-out in the packet showing where they

would be housed. He referred the Board to paragraph c), where they stated that there would be no detriment to property values. Section 5, containing a report from the Stanhope Group LLC, supported this. There was also a letter from Mr. Berg, another appraiser, who also supported their position. Mr. Annis stated that he wanted to be clear that this was not a horse farm – these were their pets and they just want to bring them home under the criteria set forth in the ordinance. They had checked the ordinance before purchasing the property, which they bought as it had the feel of the country while being in the City.

With regard to the essential characteristics of a neighborhood, Mr. Annis stated that they really had to turn to the criteria, which were addressed in paragraph c) and Section 6, which contained photographs showing what they were trying to bring to the neighborhood. He outlined some of their specific plans, detailed in Section 2 to address any concerns, including the storage and removal of manure and control of flies, which he felt really were not an issue. While their plans were not part of the criteria, they were something about which they felt strongly. He stated that there would be no increase in traffic or safety hazard created as the paddocks and barn were well off the main road. There would be no excessive demand on municipal services or increase in storm water runoff. They had consulted with the City on other issues such as health and environment and received good suggestions, which is where a lot of their plans came from.

Mr. Witham asked about the schedule for emptying the trailer of manure and Mr. Annis stated that he hauls the trailer off as soon as it is full, even with grass, and would do the same here.

Ms. Rousseau noted a number of signatures in favor in Section 7 and asked where those people lived. Mr. Annis stated they were from all over and not intended to be just abutters. Those letters were submitted separately. He stated that they had invited the neighbors to come to their home to discuss the plans and their concerns, but a number did not come. He stated that they wanted this to be a smooth transition, but noted that there almost seemed to be a line in the neighborhood between who supported them and who did not.

Ms. Rousseau asked him to indicate the barn on the map, which Mr. Annis did, stating that they had planted about 50 spruce trees as a buffer and, with foliage, they couldn't see Oxford Avenue. She asked how much acreage he had and he responded 3.8. When they came into the property about ten years ago, it was fully wooded. They had put a lot of effort into it, but it might have been a shock to some to see something built there.

In response to questions from Ms. Eaton, Mr. Annis stated that there was an addition on the property which resembled a barn and there were stalls which were used when the horses were there for 2 or 3 days. They would prefer not to have to build a barn, but they do have the ability to build a structure within an area that meets the criteria. Mr. Annis stated that the purpose of the addition was for his office, which was over the barn and was included in the big plan in the packet. Ms. Eaton stated that it wasn't labeled on the plan.

Mr. Durbin asked how long they had horses and whether this was before they bought the property. Mr. Annis stated a couple of years and his wife had them before. While they had considered that this would be a great property on which to have horses, they had not owned horses at first.

Ms. Rousseau asked if Mr. Annis could speak to Section 3, a letter from the City of Portsmouth Police Department reviewing the proposal as it related to various N. H. RSA's. She stated that she

was impressed that they had gone through this proposal and indicated that it met a lot of the criteria for a Special Exception.

Mr. Annis stated that the individual writing the letter had been the animal control officer for several years and was very knowledgeable. He had asked questions other neighbors might pose, such as how often she was called out for matters related to horses. The animal control officer had stated she had gone out only twice and once was just for a horse that had gotten out and gone across the street to eat grass.

Ms. Rousseau read a section from the letter dealing with storage of manure no nearer than 100' of the property line and prevention of well water contamination, noting that the letter stated they complied with New Hampshire regulations.

Mr. Annis stated that the information regarding storage of manure was for an open pile of manure. This was going to be in a trailer on a concrete pad, with a spray mechanism. This was not part of the criteria to be met, but they were choosing to do so. They also didn't want to see flies.

Ms. Rousseau read further excerpts from the letter, including the fact that the Animal Control Officer stated they were in compliance with state statute for the keeping of horses. Mr. Annis stated that they had worked very hard to satisfy the requirements.

Chairman LeBlanc noted that, in the same letter from the police department, it referenced suitability for up to 2 horses, but they had 3. Ms. Eaton commented that his Special Exception Request in the packet also referred to 2 horses.

Mr. Annis stated that their intention was to bring in two horses and have one bay for a trailer. Should they want to bring in a third horse, they would have the bay to do so.

When Mr. Jousse noted that the application was for three horses, Mr. Annis stated that they had chosen to make the application more specific than was required, as the Ordinance just referenced farm animals.

Chairman LeBlanc noted that there would be no problem with having advertised 3 horses, because they could always grant less.

Mr. Grasso asked if these horses were for their own personal use and what the proposal was for the manure in the field. Mr. Annis stated that the manure in the paddock would be cleaned and raked regularly. It's not good for the grass to have it stay there. It was also important for horses to keep grass low so it would not harbor insects.

Ms. Rousseau read the paragraph from the letter from the Animal Control Officer regarding the paddock area in which it stated there were two separate areas and exceeds what would be required for 5 horses.

Mr. Annis stated that the requirements were predicated on the fact that some owners just provided paddock grass for horses, but they also would have grain in sealed containers. He had no desire for 5 horses.

Mr. Peter Stanhope stated that he was a certified appraiser and had submitted his “curriculum vitae” along with his report. He had been asked to perform research, and form an opinion on, the impact of a small horse barn and raising of horses on abutting properties as well as those in view of the subject properties. A certified appraiser must follow uniform standards and he had used the pairing method to form an opinion, which means identifying resident homes sold in proximity to a property with horses. He detailed some of the pairings and comparisons which were on page 9 of his report. On the following page, he showed the property, adjacent property and one property removed from the site. In each case the sale price of the property adjacent to, as well as properties removed from, the property were effectively the same. There was no measurable influence on the value of surrounding properties.

When Mr. Grasso asked how much longer it took for one home to sell than the other, Mr. Stanhope referenced his file and cited the numbers of days various properties were on the market.

When Ms. Rousseau asked what type of neighborhoods these were, Mr. Stanhope stated that his pairing lists the lot sizes, ranging up to 2.5 acres. They were pretty much residential neighborhoods.

The following individuals, a number of whom were abutters, spoke in favor of the petition: Ms. Marie Beaupre, Peverly Hill Road, Mr. Michael Lalime, 600 Greenland Road, Mr. Donald Foucher, 566 Greenland Road, an abutter on Oxford Avenue, a resident of Rye, Ms. Wendy Welton and Ms. Joli Ann Foucher. Their statements included the following: That a number of them or family members had allergies, but had no problem with the horses when they visited; that bugs had not been an issue; that the horses were well taken care of and would be asset to their properties; and that the distances set out in the ordinance provided adequate protection. Two supporters, one of whom had leukemia, lived adjacent to properties with horses and had experienced no problems. One abutter stated that he had invited neighbors to a cookout to discuss the proposal, but only a few neighbors showed up.

SPEAKING IN OPPOSITION TO THE PETITION

The following abutters and neighbors, a number of whom referenced written submittals, spoke in opposition to the petition: Ms. Margaret Hollihan, 90 Oxford Avenue, an abutter at 100 Oxford Avenue, Mr. Alan Vangile, 75 Oxford Avenue, Ms. Elizabeth Lane, 123 Oxford Avenue, Mr. Sean Ennis & Ms. Catherine Ennis, 59 Oxford Avenue, Mr. Dave Pickering, 60 Oxford Avenue.

Their concerns included the following: That the flies presented a problem; that similar petitions had been denied in the past, but had been sneaked in; that this would change the character of the neighborhood; that individuals with illnesses would not be able to sit outside and fully enjoy their property; that the smell of manure was offensive and would be carried on the wind; that they had experienced flies and odor when the horses visited; that the value of their properties would be diminished; that the introduction of farm animals into a residential neighborhood could open the floodgates; that future owners could turn the property into a pig farm or petting zoo; that horses attract parasites; and that the requirements for a Special Exception as to health and safety and quality of life were not met.

SPEAKING TO, FOR OR AGAINST THE PETITION

Ms. Wendy Welton stated that horses in residential areas were vaccinated against diseases. In response to the keeping of other animals, this would be specifically for 2 horses, not pigs or cattle. Someone who could afford to buy in the area would probably not be raising chickens for dinner. Regarding health issues, she had personal experience with an individual with a bone marrow transplant whose doctor wanted him to avoid people, not animals.

Ms. Catherine Ennis stated that there was an inability to control what goes on with parasites. Concerning medical issues, a person who has leukemia does not have the same immune system and it was different for each doctor and patient.

In response to a question from Ms. Rousseau regarding the 100' lot line, Mr. Annis put up the site plan indicating the barn would be a little over 110' to the property line.

DECISION OF THE BOARD

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

Chairman LeBlanc noted it would have to be granted as being for two horses.

Ms. Rousseau withdrew the motion and made a motion to grant as presented and advertised, except to allow 2 horses instead of 3. Mr. Witham seconded the motions.

Ms. Rousseau stated that, based on the support from the Animal Control Officer, she felt this applicant met the criteria for a Special Exception. There also had been an appraisal from a certified licensed appraiser so there would potentially be no adverse effect on property values. She could see no hazard to the public or adjacent properties and, based on the report from the Animal Control Officer, the applicants would be in compliance with state law requirements. She stated that there was no evidence of the creation of a traffic or safety hazard or increase in congestion. There would be no excessive demand on municipal services and there would be private disposal of waste. There was no evidence of an increase in storm water runoff. In the previously cited report, there had generally been no complaints about horses from anywhere in the City. She noted the support from individuals who were living near farms which kept horses. In general, the community enjoys having animals as long as they were well kept and in compliance with state law. She felt this particular property was very different from the abutters in the character and size of the property. A Special Exception was allowed in the area and she felt they met the requirements for that as well as state law.

Mr. Witham stated that there was obviously a lot of emotion involved, but for him you need to balance the rights of the property owner with protection of the neighborhood. The fact was that zoning does allow horses by Special Exception and he felt they met the criteria. The issues of parasites and flies, etc. were not new, but, even taking into account all these variables, the writers of the ordinance allowed horses in the zone as long as they met the criteria. On the one hand, you have residents saying they can't enjoy their back yard any more and on the other a property owner who had investigated what was allowed if he met the criteria and also has rights. He noted that there were a lot of allowed conditions which could generate issues for neighbors. For example, you could have a child who drives an ATV all day, or someone could put in a goldfish pond which

attracted mosquitoes. He stated that there would be no hazard to the public or adjacent properties from fire or explosion, nor traffic or safety hazards, excessive demand for municipal services, or increase in storm water runoff.

Mr. Witham stated that what it came down to was that he didn't feel there would be a detriment to the value of surrounding properties or change in the essential character of the neighborhood. He didn't feel 2 horses were going to change the essential character considering all the conservation land that abuts. Looking at the location and scale of the structures, a lot of open space would remain. There would be no issues of smoke, dust or glare, or unsightly outdoor storage. The issue he had to get comfortable with was any possible effect on value of the odor, but he assumed the writers of the ordinance had thought about that when they said that 100' was sufficient and he didn't feel that was a reason to deny the petition.

Chairman LeBlanc asked if it would be acceptable to the maker to amend the motion to indicate that the specified 2 horses would be limited to the designated structures as indicated on the plan.

Ms. Rousseau stated, "no."

A discussion followed among Mr. Witham, Chairman LeBlanc, Ms. Rousseau, Ms. Eaton and Mr. Holden about the necessity for stipulating certain areas, as designated on the plan submitted by the applicants, for the shelter, related storage, and activity of the horses.

A motion was made by Ms. Eaton to add a stipulation to the motion that the activity of the horses would be limited to the designated structures and areas as depicted on the submitted plan. The motion was seconded by Mr. Witham.

The motion to add a stipulation was passed by a vote of 4 to 3, with Ms. Rousseau and Messrs. Durbin and Grasso voting against the motion.

Mr. Jousse stated he was going to vote against the motion. He felt that, while he felt that the present owners had all good intentions, a Special Exception would go with the property. He felt it was important to maintain health and welfare and that not much consideration was given to surrounding properties. A lot had been said about the removal of solid waste, but nothing about liquid waste. He was concerned about possible effect of neighbors, some of whom had medical problems and felt their concerns overrode those of the property owner.

Chairman Leblanc stated he would not support the motion as he felt the Special Exception failed on the detriment to property values in the vicinity. This was an established area and, to have animals brought into an adjacent property, he felt did change the character of the neighborhood.

Ms. Rousseau stated that she understood the abutter issue, but she was looking at it from a legal standpoint. There had been a lot of personal opinions as to property values, but they had a certified appraiser saying there would be no diminution in value. She stated that a real estate agent was not a certified appraiser. She felt that they had to, from a legal standpoint, take a look at the criteria. She had heard the other side, but believed the applicant had met the bar.

Chairman LeBlanc noted that their decision was presumed to be legal.

Mr. Durbin stated that he agreed with Chairman LeBlanc’s comments. He also felt there would be a change in the essential character of the neighborhood. This would represent a potential nuisance coming into the neighborhood, as opposed to people coming to the nuisance.

Ms. Eaton stated that she also would not support the motion. She didn’t feel this petition met the criteria adequately enough to convince her that there would be no detriment to property values.

The motion to grant the petition as presented and advertised, but with 2 horses, and with the added stipulation that the activity be limited to the designated structures and areas as depicted on the submitted plan, failed to pass by a vote of 2 to 5, with Ms. Eaton and Messrs. Durbin, Grasso, Jousse, and LeBlanc voting against the motion.

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Mr. Jousse made a motion to dispense with the ten o-clock rule, which was seconded and passed by voice vote, with Ms. Rousseau in opposition.

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5) Petition of **Matthew D. Beebe and Barbara R. Jenny, owners**, for property located at **81 Lincoln Avenue** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow a 7’3” x 6’ one story addition creating 30.9%± building coverage where 25% is the maximum allowed. Said property is shown on Assessor Plan 113 as Lot 35 and lies within the General Residence A district.

Chairman LeBlanc announced that the applicants had requested that this petition be withdrawn.

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6) Petition of **Guy B. Stearns, owner**, for property located at **16 Cabot Street** wherein Variances from Article III, Section 10-303(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow a 7’ x 10’ deck with steps on the 1<sup>st</sup> floor under an existing 2<sup>nd</sup> floor deck with a 2’± right side setback and an 8’± left side setback where 10’ is the minimum required in each instance. Said property is shown on Assessor Plan 135 as Lot 46 and lies within the Mixed Residential Office district.

**SPEAKING IN FAVOR OF THE PETITION**

Mr. Guy Stearns stated he was the owner of the property. Addressing the criteria, he stated that it would be in the public interest to have a safer and more aesthetically pleasant deck, as could be seen in his exhibit b. He stated there would be no negative impact on the neighborhood. The special condition of the property creating a hardship was that the lot was 22’ wide and, as a result, anything over 2’ wide would violate the setbacks. He stated they would like to tie into the existing supports of the current deck and this will fit in the existing footprint. They were not increasing coverage. Due to the size of the lot, there was no other way to achieve what they would like without a variance. He felt justice would be served by providing a safer and more aesthetically pleasant entryway, which would also allow the first floor apartment some open space. By tearing

down the existing structure and putting up new siding and a new deck would, if anything, increase surrounding property values.

Ms. Rousseau asked if he could clarify on exhibit b where they want to take down a doorway and put up a deck and Mr. Stearns indicated the features of the plan. In response to her further question, he confirmed that the deck on top was not going to change.

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

Addressing the criteria, Mr. Durbin stated that the public interest was not an issue in this case. The special condition creating a hardship was that the footprint of the existing structure already encroaches into the setback and this would be within that existing footprint. Because of this encroachment, there was no other method for them to pursue without seeking a variance. He stated that the spirit of the ordinance would be served as there would be no blocking of light and air. In the justice balance, the detriment to the owner in denying the variance would be greater than any public benefit. There was no evidence that the value of surrounding properties would be diminished.

Mr. Grasso stated that the applicant provided a pretty bold summary when he stated that the lot was 22’ wide and anything wider than 2’ would have to come before the Board and he agreed.

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

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7) Petition of **Ampet Inc., owner**, for property located at **921 Islington Street** wherein the following were requested: 1) a Variance from Article II, Section 10-208(24) to allow outdoor storage of automobile parts inside a proposed 6’ stockade fence and 2) to amend a 17 January 01 BOA stipulation of approval to allow the hours of operation for automobile repairs to be 8 am to 6 pm Monday through Friday and 8 am to 5 pm on Saturday. Said property is shown on Assessor Plan 172 as Lot 10 and lies within the Business district.

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernard W. Pelech stated that he was there with the applicant and several of his staff members. Mr. Anderson recently undertook leasing the property on Islington owned by Ampet Inc., which had been the subject of many previous applications before the Board. The property was primarily a gas station, but had also been used by several lessees for auto repairs. Unlike

previous repair businesses, Mr. Anderson was also leasing the gas station portion and running a full service station and repair business.

They were asking to amend a previous stipulation and add an additional hour during weekdays and continue until 5:00 p.m. on Saturdays. He stated that the staff was on site for the gas business and it did not make sense that auto repairs had to cease at noon. The extra weekday hour was critical because people come after work to pick up their vehicles.

Attorney Pelech stated that they were also requesting a variance for outdoor storage of parts behind the building. The aerial photographs he had provided depict why this should be granted as the property was surrounded by land owned by electric distributors. An area behind the building can be seen in the photograph showing 5' high stacks of pipe and other materials that had existed there for several years. This formed a natural, but also unsightly, barrier. Mr. Anderson would confine his storage to an area behind his building and between the stacks of grey pipe on the property of Consolidated Electric. In addition, a 6' high stockade fence would be built along the property line to shield the view from the roadway of the current grey pipes, this proposed outdoor storage and Mr. Anderson's dumpster. This was a small storage area, primarily for auto parts and tires, which are disposed of on a weekly basis and won't create a hazard from fire or mosquitoes. He stated that the neighborhood would benefit from the shielding of the pipes and the dumpster. Security would be improved as the area would be enclosed on all four sides by a fence.

Attorney Pelech stated that there would be no diminution in the value of surrounding properties. He, himself, was an abutter and had no problem with the operation. Mr. Anderson was attempting to run a clean business and make improvements to the property. He submitted a petition signed by numerous neighbors indicating that they had no objection to the proposal. The hardship was that this was a very small lot with limited area for storage and the ordinance interferes with a reasonable use of the property. He stated that the spirit of the ordinance in promoting the general health and welfare of the community, would not be violated by granting the petition as nothing proposed would be onerous or change the essential character of the neighborhood. In the justice test, if the variance were denied, the hardship on the applicant would not be outweighed by any benefit to the public. He stated it was in the public interest that this business continue and the limited screened storage would not be contrary to the public interest.

Attorney Pelech stated that the extended hours would not have an effect on the neighborhood as they were going to be pumping gas anyway. It was not their intent to stockpile materials, but remove them on a weekly basis. They would be happy to accept stipulations regarding the disposal of the tires or other materials.

Mr. Witham asked, considering possible environmental issues, what exactly the parts were and how long they would be there. Mr. Russell Anderson replied that some were transmissions, used or new and tires, which would be shipped out on Saturday morning – things the station was too small to store.

When Mr. Witham asked about a transmission dripping oil, Mr. Anderson stated that they drain everything thoroughly before it comes out. It was all very clean and well kept and met every industry standard for safety.

Ms. Rousseau asked why they couldn't build a little shed.

Mr. Anderson stated he would still want to install a stockade fence to neaten up the station. They could build a shed or something of like that.

Ms. Rousseau asked about the environmental impact and Attorney Pelech stated that, to his knowledge, there was nothing in Mr. Anderson's operation that did not comply with environmental regulations.

Ms. Diane Share of 38 Thaxter Road stated that she had been on record in 2001 as opposing the variance and her concern was that the stipulations made then remain on the record. Her only issue was the stockpiling of cars, but she knew Mr. Anderson was working on that. She did approve the additional hours and felt the neighborhood supported him.

Mr. Carl Lemire, of 337 Aldrich Road stated that Mr. Anderson had taken it upon himself to improve things around the station and provide better curb appeal. Mr. Anderson was also a resident of Portsmouth and took pride in the community. It was necessary to expand the hours to accommodate that community and the customers. When Mr. Witham asked what he felt the neighborhood position would be on expanding the Saturday hours, Mr. Lemire said that these would be daytime hours, so he would see little, or no, impact.

SPEAKING IN OPPOSITION TO THE PETITION

No one rose to speak.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Ms. Rousseau stated that she had a question for Attorney Pelech which was how to get over the environmental issues – what would they propose could be done to make them comfortable.

Attorney Pelech stated that Mr. Anderson had stated he had no problem with putting up some sort of structure behind the building, such as a shed, which would deal with the concerns of the Planning Department regarding the environment. Any parts that might leak could also be stored in some sort of container which might alleviate any concerns.

Mr. Witham stated he was reluctant to pursue the structure as then they would be dealing with setback issues. He felt they needed to deal with what was before them and, if denied, the applicant could come back.

DECISION OF THE BOARD

Ms. Rousseau made a motion to grant part 2 of the petition, to allow the hours of operation for automobile repairs to be from 8:00 a.m. to 6:00 p.m. on weekdays and 8:00 a.m. to 5:00 p.m. on Saturdays. The motion was seconded for discussion by Mr. Jousse.

Ms. Rousseau stated that the restriction on the hours, in her opinion, interferes with the reasonable use of the property. It was reasonable to extend the hours to 6:00 p.m. on weekdays until 5:00 p.m. on Saturdays. She felt that the restriction at the time was trying to find a balance between residential and commercial properties and she didn't see how this alteration would injure the rights

of others. The property owner had a right to do business in reasonable hours. Islington was a busy street and was just as busy at 6 as at 5, as well as noon on Saturday. Justice would be done for the applicant. There was no evidence that extending the business hours would diminish the value of surrounding properties.

Mr. Jousse stated that the proposal was a good one from the business perspective. It made no sense to have an employee there who could only do half the job after 5 and on Saturday afternoons.

The motion to modify the hours of operation for the auto repair business to be from 8:00 p.m. to 6:00 p.m. on weekdays and from 8:00 a.m. to 5:00 p.m. on Saturdays was passed by a unanimous vote of 7 to 0.

Ms. Eaton made a motion to deny part 1) of the petition as presented and advertised, which was seconded by Mr. Durbin.

Ms. Eaton stated it was not environmentally sound practice to keep auto parts outdoors as there was too much of a chance for release into storm water and, with an impervious surface, this was more of a likelihood. She felt they needed to come back with covered storage.

Mr. Durbin stated his reasons were the same.

Mr. Witham stated he would support the motion because there was another reasonable method for the applicants to pursue and he felt a simple shed would get them what they want and alleviate their concerns. He felt the option was also financially feasible.

Ms. Rousseau stated that she wanted the applicant to be successful, but couldn't get comfortable with this particular proposal.

The motion to deny part 1 of the petition was passed by a vote of 5 to 2, with Mr. Jousse and Chairman LeBlanc voting against the motion.

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**III. ADJOURNMENT**

It was moved, seconded and passed to adjourn the meeting at 10:40 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary