

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

EILEEN DONDERO FOLEY COUNCIL CHAMBERS

7:00 p.m.

JULY 15, 2008

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

EXCUSED: Arthur Parrott, Alternate: Derek Durbin

ALSO PRESENT: Lucy Tillman, Chief Planner

Ms. Rousseau assumed a voting seat for this hearing.

I. OLD BUSINESS

A) Approval of Minutes – June 17, 2008

It was moved, seconded and passed by unanimous voice vote to accept the Minutes with minor corrections.

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B) Motion for Rehearing for property located at **233 Union Street**.

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

Mr. Grasso stated that the Board had made a decision on the information provided and no new information has been presented. Mr. Witham stated that the applicant claimed, in the rehearing request, that the Board didn't address all the criteria. There was no basis for this contention as a petition can be denied if it fails to meet any one of the criteria.

The motion to deny the Motion for Rehearing was passed by a vote of 6 to 0, with Ms. Rousseau abstaining.

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C) Request for a One-Year Extension of Variance, granted July 17, 2007, for property located at **145 Porpoise Way**.

Mr. Jousse made a motion to grant a One-Year Extension of Variance, which was seconded by Mr. Grasso.

Mr. Jousse stated that this was one of those cases where it was difficult to do all that was necessary to get the project off the ground and he felt a one-year extension was appropriate. Mr. Grasso agreed.

The motion to grant a One-Year Extension of Variance through July 17, 2009 was passed by a unanimous vote of 7 to 0.

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D) Motion for Rehearing for property located at **606 Greenland Road.**

Ms. Rousseau made a motion to grant the Motion for Rehearing, which was seconded for discussion by Mr. Jousse.

Ms. Rousseau stated that she agreed with all of the points raised by the attorney for the applicant in their request for a rehearing and felt the applicant met the requirements for a Special Exception.

Mr. Jousse stated he would not support the motion. The Board had correctly applied the law and no new evidence had been presented that was not available at the time of the hearing.

When Ms. Eaton asked if they could address the neighbor’s concerns about odors and how they had been considered, Chairman LeBlanc stated that this would not be raised at this time, but at a rehearing should one be granted. The only bases for granting a rehearing were if the Board had committed errors or there was new information.

Ms. Rousseau commented that, in looking at the supporting documentation, if the Board voted against a rehearing, there was a risk of going to court and costing taxpayers unnecessary money.

Chairman LeBlanc stated that there was nothing new presented and he did not feel the Board had erred. They had gone through all the criteria and weighed the information presented to them in a thoughtful, thorough, manner and he believed their decision would stand.

The motion to grant a rehearing failed to pass by a vote of 1 to 6, with Chairman LeBlanc, Ms. Eaton and Messrs Grasso, Jousse, LeMay, and Witham voting against the motion. The Motion for Rehearing was denied.

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E) Request for a One-Year Extension of Variance, granted July 17, 2007, for property located at **824 State Street.**

Mr. LeMay made a motion to grant a One-Year Extension of Variance, which was seconded by Ms. Eaton.

Mr. LeMay stated that there just had not been enough time to act on the variance and nothing appeared to have changed that would alter their opinion in granting it.

Ms. Eaton stated that it sometimes took extra time to get things done and the request was reasonable.

The motion to grant a One-Year Extension of Variance through July 17, 2009 was passed by a unanimous vote of 7 to 0.

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F) Request for a One-Year Extension of Variance, granted August 28, 2007, for property located at **150 Route One By-Pass.**

Mr. Jousse made a motion to grant a One-Year Extension of Variance, which was seconded by Mr. Grasso.

Mr. Jousse stated that there was another request for the property that evening and, if the new variance was granted, then he believed it would supersede the one-year extension, but he wanted to cover all angles. In any event, they would need time to proceed.

Mr. Grasso stated that this was a first request and he supported a one-year extension.

The motion to grant a One-Year Extension of Variance through August 28, 2007 was passed by a unanimous vote of 7 to 0.

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II. PUBLIC HEARINGS

1) Petition of **New England Glory LLC, owner**, for property located at **525 Maplewood Avenue** wherein an Appeal from an Administrative Decision regarding the determination of the Code Officials that the Building Permit to convert the 9 apartments into a 14 room Bed and Breakfast has lapsed as the building continues to be used as 9 apartments.

Notwithstanding the above, if the Administrative Appeal was denied, a Variance from Article II, Section 10-206 was requested to allow the existing 9 apartments to be converted into a 14 room Bed and Breakfast. Said property is shown on Assessor Plan 209 as Lot 85 and lies within the General Residence A district.

Chairman LeBlanc announced that the applicant had requested that the petition be postponed to the August meeting.

Mr. Grasso made a motion to postpone the hearing until the August meeting, which was seconded by Ms. Rousseau and passed by unanimous voice vote.

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2) Petition of **RA, SJ, and BN Goodman, owners, and Michael Maguire d/b/a New Hampshire Motorcycle Warehouse applicant**, for property located at **930 Route One By-Pass**

to be relieved of a 1988 Board of Adjustment stipulation of approval that requires a fence along the left property line. Said property is shown on Assessor Plan 142 as Lot 16 and lies within the Business district.

Mr. Jousse announced that he was stepping down for this petition.

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

Attorney Paul McEachern passed out a site map, indicating that the property was outlined in yellow and the fence line he would be talking about was in red. He related a little history of the By-pass and previous uses of the lots as gas stations. In 1988, the owners were granted a Special Exception to use the property as an auto repair facility, with as one of the conditions, that a screening fence be erected along the rear and side property lines. At the time, there was probably a fence along the side line but it had not existed, except for remnants, for many years. There was a fence along the rear property line along Kane Street which suitably screens residential uses.

Attorney McEachern stated that the property was in a Business District next to an adult entertainment center. The fence indicated in red on the plan would go from the front of the Peter's Palace building, which sits on or close to the property line, to the interstate highway. He maintained that the reason for screening no longer exists as, along Alder Way, there was already a screening fence. Enforcing the condition would result in two screening fences, one right after the other. He stated that none of the screening conditions in Article V, Section 10-504 applied to this situation. There was no property used for residential that abuts the property. Conditions had changed which negated the reason for the fence. In response to a statement in the departmental memorandum that the upper floors of the Cableview Building were now used for residential, he stated that a 6' fence was not going to screen anything and he noted that the use had been created in a commercial district long after the Special Exception had been granted. The memorandum had also stated that it was a good idea to screen the Peter's Palace from this property, but that was not in the ordinance.

Attorney McEachern stated that, in 1988, the lines were configured differently. They were asking that the City recognize the changes and relieve the owners of this particular condition for the Special Exception. He had met with the City Attorney who, he stated, was in agreement with what they were requesting.

Ms. Rousseau asked if they were also asking for relief because it would cost money to maintain a fence. Attorney McEachern stated, "that, too." He added that there could also be a legal situation between this property and the abutter because their property line goes right out and yet there were remnants of fence about 12' back. This would just make unnecessary work for the owner and tenant because the screening was already there.

In response to questions from Mr. LeMay, Attorney McEachern stated the fence which provided privacy to the residential area was on their property on the northeasterly side of Kane Street. The fence along Alder Way had been put up by either Peter's Palace or Cableview, but he didn't see the purpose as the residences were on the 2<sup>nd</sup> or 3<sup>rd</sup> floor. He confirmed Chairman LeBlanc's

statement that, although they were one lot at one time, Peter's Palace was now on its own independent lot.

Ms. Rousseau asked how many feet the residences shown at the top in the aerial photograph were from the fence and Attorney McEachern stated they were over 100'.

Mr. Mike Maguire stated that the fence would be 10' off the property line, go right across the driveway, and be 4' lower because that's where it's leveled. Chairman LeBlanc asked if he had had the lot surveyed and Mr. Maguire stated that the new owners of Peter's Palace had done so and the marking was about 6" off the building and goes diagonally across the driveway.

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

No one rose to speak.

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

Mr. Alain Jousse stated that he lived at 197 Dennett Street and, if this request for relief affected the neighborhood, they would be there. He noted that Cableview had residences but they were separated from this property by another commercial property. The motorcycle shop does not abut any property with residences.

Chairman LeBlanc read an e-mail from Mr. Dan Medeiros, of 287 Dennett Street, who was in favor of keeping the fence.

Mr. Steven Goodman stated he was one of the owners. If there was any practical reason for re-erecting the fence, he would be in favor, but it served no purpose and the adjacent landowner had knocked it down. He stated that he has met regularly with Mr. Maguire who was trying to resolve a lot of the issues in the neighborhood. He felt his tenant was trying to comply, but, in this situation, there was no good reason to do so. They could see on the map that there were no private homes, only businesses.

### **DECISION OF THE BOARD**

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

Mr. Witham stated that he believed the previous Board had done due diligence and felt the stipulation was necessary. While conditions might have changed and the fence might not be needed at this moment, these stipulations go into perpetuity. Conditions could change again and there would be no recourse to get the fence back up. A dentist's office might want to move in to the abutting property in the future and they would be up against a motorcycle warehouse with no screening. He pointed out in the aerial that there were about 22 cars around the building, which illustrates why it would be a good idea to have a screening fence. There was a strong reason for the stipulation at the time and he felt this still carried weight.

Mr. Grasso stated that, almost every month, it is mentioned that Variances and Special Exceptions go with the land. The Board members would have been aware of this at the time the Special Exception was approved, and wouldn't expect that the owners would come back and request a change.

Ms. Rousseau stated that she thought that stipulations were additional add-ons that the Board puts on the variance or attaches to the variance to get comfortable with it. Things change over time and if they as a community, a historical community, do not accept change, they may be looking at stipulations from hundreds of years ago attached to some of our properties and they have to be open as a community to some of these changes. She felt that some of these stipulations, this one included, unreasonably interfered with the property owner's right to use their property. Hopefully, as a community, they address those as they come up. She stated that stipulations were very different from a variance and reiterated that it was their responsibility to address them as they come up.

The motion to deny the petition resulted in a tie vote, with Ms. Eaton, Mr. LeMay and Ms. Rousseau voting against the motion so the motion failed to pass..

Mr. Witham made a motion to grant the petition, which was seconded by Mr. LeMay.

Mr. Witham stated that his motion was for discussion and he would not support his own motion. He wished to carry over his previous comments.

Mr. LeMay stated that two things persuaded him that this fence was not necessary and the stipulation could be removed with no harm. If there was significant impact on residential properties, those owners would be there. Also, since originally granted, there developed an intervening commercial property and the stipulation just resulted in protecting one commercial use from another commercial use.

Ms. Eaton agreed that shielding commercial from commercial was not necessary.

Mr. Witham noted that the other commercial use needed a Special Exception to exist and it might have been denied if it were not for the stipulations. They might not feel that Peter's Palace needs screening but that use could change and he didn't understand why you would not need to screen a lot with 24 cars scattered all around.

Ms. Rousseau stated that the stipulation was put in in 1988 for conditions that no longer exist so that's why they need to, she felt, adjust it and give this applicant some relief. She felt that, for some of the properties around here, you could have stipulations that go back forty, fifty, a hundred years that were ridiculous today and had no relationship to what happened. Route One By-Pass was one of the busiest highways in the City and to think that an 8' fence would shield and protect a property, she just didn't see that was reasonable. She felt they should allow the property owner to use their property in the best possible use and not cause an unnecessary expense.

Ms. Rousseau felt that the conditions in 1988 no longer existed so they needed to make an adjustment and give the applicant relief. There could be properties with stipulations going back

100 years that would be ridiculous today. Route One By-Pass was one of the primary routes in their City and she just did not think it was reasonable to think an 8' fence would shield a property. They should let it go and allow the property owner to use their property.

The motion to grant the petition failed to pass by a vote of 3 to 3, so the petition was denied. Messrs. Grasso, LeBlanc and Witham voted against the motion.

Mr. Jousse resumed his seat.

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3) Petition of **Kentucky Fried Chicken of Portsmouth, c/o Francis E. Daddario, owner, Churchill & Banks, applicant**, for property located at **1840 Woodbury Avenue** wherein the following were requested: 1) a Variance from Article III, Section 10-304(A) to allow a 1,750 sf addition to an existing 2,500 sf building within 100' of property zoned residentially, 2) a Variance from Article III, Section 10-304(A) and Article IV, Section 10-401(A)(2)(c) to allow the 1,750 sf addition within the required 70' front yard; and, 3) a Variance from Article XII, Section 10-1201(A)(3)(e) to allow off-street parking and accessways within 100' of a residential zone where such use is not allowed. Said property is shown on Assessor Plan 239 as Lot 8 and lies within the General Business district.

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernard W. Pelech stated he was accompanied by Mark Dewling, the architect for the project, Dennis Moulton, from MSC, and Richard Baccari II, from Churchill & Banks. This was a 15½ acre parcel with a half acre of fill added in the 60's before regulations. A Kentucky Fried Chicken operation had been built on it but was no longer in business. The first 150' – 200' along Woodbury Avenue had been zoned General Business, but then the rest of the site, which was all wetlands and unbuildable, was zoned Single Residence A. Prior owners had attempted to get a fill permit, but were denied. They were there that evening because they required variances for the building, as well as the parking, to be within 100' of that SRA zone, comprised 100% of wetlands. Attorney Pelech noted that the memorandum clarified that they do not need the variance for the front yard setback relief. Subsequent to the advertisement, closer examination of the latest plans indicated that the addition was not within the front yard setback – only a corner of the existing building.

Ms. Tillman confirmed that a variance was not required for the front yard setback.

Attorney Pelech stated that they had been working on the permitting process for several months, beginning with a joint meeting of the Conservation Commission and the Planning Board. This was a difficult site. He indicated on the plan the 100' setback from the edge of the wetlands and a small triangle which was the only area where you could build without relief. Their request was for two dimensional variances, the first to allow the addition, in pink on his plan with the existing in orange, to be within 64' of the zoning line. He indicated the zoning line between General Business and Single Residence A, which encompassed the wetlands. The aerial photograph he had submitted showed the buffer and also the wetlands. He stated that they have received a conditional use permit for this building and the addition to be in the inland wetland

buffer zone. They have filed a Site Review application and gone twice before the Technical Advisory Committee. They would be going before the Planning Board that Thursday and had also received approval from the Traffic and Safety Committee. Attorney Pelech stated that this would be a corporate-owned Verizon phone store with 7 to 10 employees, a use which would be less intense and generate less traffic than previous uses.

Citing Malachy Glen Associates Inc. v. Town of Chichester, Attorney Pelech stated that this petition was not contrary to the public interest. The use will not alter the character of the locale, which was General Business all along that stretch of Woodbury Avenue. It will not unduly conflict with the ordinance's basic objectives of protecting health, safety and welfare. The use will be less intense and not place a strain on municipal services. The special conditions creating a hardship were that there was less than an acre of usable land in 15 some acres and the setbacks would allow only 400 s.f. on which to build without a variance. He stated that it was in the spirit and intent of the ordinance to keep commercial business and parking areas 100' from residential. This residential area was wetlands and would never be built on. The nearest true residential use was 375' away. The hardship on the applicant would not be outweighed by any benefit to the public in denying the petition. Another fast food facility could be accommodated, but would be more harmful. Attorney Pelech noted that the proposed use would be consistent with the prevalent uses in the area and would not diminish the value of surrounding properties.

Ms. Rousseau asked how far they would be from the residential zone, about the parking within 100' of that zone, and how many spaces there were before and after. Attorney Pelech stated the corner of the building was approximately 64', where 100' was required. They had reduced the parking spaces on the site from 35 to 28. The Conservation Commission liked their plan to remove pavement where the parking spaces were indicated in grey and install a permeable surface. Storm water runoff treatment would be provided for the entire site so that there would be no runoff into the wetlands.

Chairman LeBlanc asked if they had figures on how much less the trip ends would be than with the former KFC and Attorney Pelech stated they had submitted a report to Traffic and Safety and Mr. Dennis Moulton, of MSC, could address that in his presentation.

Mr. Moulton stated that Attorney Pelech had covered much of what he had prepared regarding the reconfiguration of the site, reduction in paved surfaces and storm water treatment. The site overall would have much less of an impact in terms of the environment and zoning. He stated they would be narrowing entrances onto Woodbury Avenue, which would increase traffic safety. An engineering calculation of traffic at the site by a fast food operation indicated 137 trips during the peak morning hours and 117 in the evening. For a phone store, those figures would be 29 in the morning and 21 in the evening, approximately an 80% decrease in traffic.

Mr. Mark Dewling, of Dewling, Woodbriar Architects, put up a display of photographs showing what was existing and another display of the proposed new building. He indicated where the new addition would be and its orientation to Woodbury Avenue, and outlined some of the functions that would be accommodated in the structure.

Mr. Jousse asked if the represented signage was all that was going to be required. Sometimes only the initial signage was shown and the applicants had to come back with additional requests.

Attorney Pelech stated that he did not believe it exceeded what was allowed by the Zoning Ordinance. There was also an existing free-standing pylon sign which was grandfathered.

**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

Chairman LeBlanc noted that item 2) of the petition was removed as not needed, which left items 1) and 3).

Ms. Eaton made a motion to grant items 1) and 3) of the petition as presented and advertised, which was seconded by Mr. LeMay.

Ms. Eaton stated that granting the variances would not be contrary to the public interest as the use would be less intensive and the residential area would be buffered. The special condition creating a hardship was the split zoning on a single property, which impacted the ways in which it could be used. She stated that the intent of the ordinance was to shield commercial from residential uses, but in this case, the referenced residential area was wetlands on the property. She felt that justice would be served as the owner could reasonably use the property, while the public was protected. The value of surrounding properties should, if anything, improve.

Mr. LeMay stated that the proposed addition was appropriate to the area both in height and scope. As presented, the hardship was obvious and there would be no benefit to the public in denying the variance.

Ms. Rousseau stated that she was surprised that the maker of the motion did not specify the 64' that they were requesting from the wetlands, and also that the parking would be 28 spaces. So, she would like to put that on the table, for the maker of the motion to amend the motion.

Ms. Eaton stated that she felt those issues were covered by the Planning Board and the Technical Advisory Committee and were not appropriate for them.

Chairman LeBlanc asked Ms. Rousseau if she would like to make a motion.

Ms. Rousseau stated she would like to discuss it. How would they know for sure if that was the case.

Ms. Eaton stated that the plan showed 64' where 100' is required; it showed the spaces, and this was the approved plan.

The motion to grant item 1) and item 3) of the petition, with item 2) not needed, was passed by a unanimous vote of 7 to 0.

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4) Petition of **Edward W. Momm Jr. and Lucy K. White, owners**, for property located at **130 Union Street** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow an irregular shaped 2 story 711 sf attached garage with living space above with: a) an 18”± left side setback where 10’ is the minimum required; and b) 35.49%± building coverage (including a 10’ x 17’ second floor dormer) where 35% building coverage is the maximum allowed. Said property is shown on Assessor Plan 145 as Lot 60 and lies within the Apartment district.

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

Mr. Ed Momm stated that they would like to replace an existing garage which had cracked footings and was falling down. As could be seen on the paperwork, it abuts the property line on the left hand side. They had considered a stick-by-stick replacement but to do it justice, they needed to tear it down, put in new footings and rebuild it approximately 18” from the property line. This would move it away from the lot line, and allow access and room for maintenance. They were also planning a dormer over the garage area for storage and potentially living area. Initially, they would put the cars in the garage and have the upper area for the rest of items stored in the garage.

Addressing the criteria, Mr. Momm stated that it would not be contrary to the public interest to have a newly constructed garage, which would be more easily maintained and get the cars out of the driveway. The special conditions were that the lot was tight and irregular in shape. There was no way to move the garage back 10’ and it would be expensive and an unnecessary hardship to rebuild on the lot line on a stick-by-stick basis. He stated that it was in the spirit of the ordinance to improve the property while moving the garage in 18” from the property line. Regarding the justice test, he stated there would be no public benefit in denying their request while the extra space would do a lot for them. Property values would only be improved by a new garage. While the dormer would increase the height of the garage by about 4’, he didn’t feel that was significant.

Mr. LeMay noted that the size of the garage was shown on the existing plan as 21’ x 25’, but there was also a dimension of 22’9” and he wondered what that was. Mr. Momm stated that may be the outside measurement. When Mr. LeMay asked if the line of the deck would be in the same place, Mr. Momm responded that the other thing they were trying to do was to the main part of house. As they could see, there was an existing deck, which leaked water into the house and was not used. They want to tear this down, put an addition in its place, and move the inside wall out approximately 5’ so it was flush to the main part of the house.

In response to a question from Chairman LeBlanc, Mr. Momm stated that the wall would not be closer than the deck or exceed the existing footprint of the deck, actually a little bit less. That part of the modification was 25’ from the nearest lot line.

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

Ms. Marilyn Driver, of 287 Austin Street, stated that her house was for sale and she would like the Board to consider stipulating that a window not be put on her side of the yard. She felt that

the privacy of her garden would be impacted and passed out photographs of her property in relationship to that of the petitioners. She agreed that the foundation was in bad shape and had no objection to them moving it back, but she pointed out in the pictures that there were also huge cement blocks and a trench which would have to be excavated for the frost line. Her property was 2' lower and she was concerned about the possible damage to her garden.

Ms. Rousseau asked her if she had discussed this with her neighbor and Ms. Driver said she hadn't been told anything and hadn't contacted them as, when she heard about it, the petition was already filed.

### **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. Grasso for discussion.

Ms. Rousseau stated that this would be a better situation than before and she did not see that the variance would be contrary to the public interest. The special conditions were that the existing garage was on the property line and they just want to make some renovations and pull it away from the line. This was the best possible plan for the property and there was no other method. She didn't see why making a simple renovation would not be in the spirit of the ordinance. Substantial justice would be done as the owner can do what they need to do to use their property. The value of surrounding properties would not be diminished and the renovations may help.

Mr. Grasso stated that, while this was a difficult case on which to come to a conclusion, the garage was in need of repair. This would be "in kind," but off the property line which is a better situation than currently exists. He would support the motion.

Mr. Witham stated that the abutter had some valid concerns and he had concerns with garages with recreational space above. The abutter had a nice little sitting area and a window would be looking down on them. He felt the Board would be granting quite a bit of relief and he would like to propose some stipulations to provide protection. He proposed that there be no windows on the left side of the garage and that the dormer be set back 4' from the main wall of the garage. As currently designed, there would be almost a 20' wall right up against the next property. His third stipulation would be that a temporary silt fence be erected during construction.

Chairman LeBlanc asked if the stipulations would be acceptable to Ms. Rousseau and Ms. Rousseau stated, "no."

Mr. Witham made a motion to add the stipulations to the motion. Mr. LeMay seconded the motion.

Ms. Rousseau stated that there had been no vote on the initial motion. Chairman LeBlanc stated that there was motion to amend it, which takes precedence.

Mr. Witham stated that he had outlined the reasons for his motion when he proposed the stipulations. Essentially, they were giving 8½’ of relief and this was a very large wall to have against someone’s outdoor enjoyment area. He felt the spirit and intent of the ordinance in requiring a 10’ setback was to protect abutters.

Mr. LeMay agreed, stating that this will allay his concerns. There were reasons for the setback and they could support those by specifying no windows.

Ms. Eaton stated that the stipulations were reasonable. If granted as requested, there would be a window and dormer within 18” of the property line.

Ms. Rousseau stated that they were putting a stipulation on a property owner for someone who was leaving Portsmouth for no good reason. There were no other abutters who had issues.

The vote to amend the motion to add the stipulations was passed by a vote of 6 to 1, with Ms. Rousseau voting against the motion.

The motion to grant the petition, with the stipulations, was passed by a unanimous vote of 7 to 0. The stipulations were the following: That there will be no windows on the left side of the garage; that the dormer will be set back 4’ from the main wall of the garage; and, that a temporary silt fence be erected during construction.

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5) Petition of **Seacoast Trust NH General Partnership, owner**, for property located at **150 Route One By- Pass** wherein the following were requested: 1) a Variance from Article II, Section 10-206 and Article IV, Section 10-401(A)(1)(b & c) to allow a 5,208 sf one story addition to the right side of the existing professional office building, 2) a Variance from Article IV, Section 10-401(A)(1)(c) to add two parking spaces at the rear of the lot in an area not currently used for parking; and, 3) a request to amend the location of the previously approved 50’ x 8’ portable coach for diagnostic services to the front of the building. Said property is shown on Assessor Plan 231 as Lot 58 and lies within the Single Residence B district.

SPEAKING IN FAVOR OF THE PETITION

Mr. Peter Weeks gave a synopsis of the history of the property since 1986, noting that the doctors had been good neighbors for the past 20 years. They had come before the Board in the past, but had not always completed their plans. They were asking for three variances. The first was to allow a 5,280 s.f. addition for which a variance had been originally granted in 2002. The second was for the addition of 2 parking spaces. He stated that, in 2002, there was also a requirement for increased parking and that part of the variance was completed in 2003 so the same amount of parking was not needed, but there was a need for two additional spaces. Their third request was to allow relocation of the mobile coach approved in 2007 to the front of the building with landscaping to screen it from the highway. That would allow patient access from inside the building. The reason for the addition was to allow for additional storage within the building, along with physical therapy and conference rooms.

Mr. Weeks stated that he would not read his entire submittal but wanted to note that they met the criteria. There would be no problems with the public interest or the value of neighboring properties. This has simply a continuation of the same medical use since prior to zoning with no neighborhood problems. The hardship was that the use predates zoning but no provision had been made for this medical use in a residential zone. He stated that the landscaping would provide protection for the public and private rights of others. Justice would be served by allowing the owner to continue to use the property as it had been used and expand with no negative impact. In the spirit of the ordinance, granting the variance would not result in any alteration in the character of the neighborhood and abutting properties would not see any changes. He provided photographs showing where the addition and coach would be located on the site and noted that the expansion meets the setback and open space requirements.

Mr. Weeks stated that his packet also included a copy of the variance granted in August of 2007 and that granted in 2002, allowing the addition. They had no problem with the stipulations, including the hedge around the property line, and no problem with the same stipulations placed on this variance, if granted. One of the previous requirements was that the access to Middle Road be closed off and that had been done. They had also complied with the requirement that the lights were to shine down.

Mr. LeMay asked where the air conditioning equipment was going to go that was currently located on the end of the building where they were proposing the addition. Mr. Weeks stated that there would be two enclosed condensers integrated with the roof of the new building. The details would be presented when they went for site review. When Mr. LeMay asked if the sound generated would be less from the condensers, he replied that it would. The trees would also serve as a noise buffer.

In response to further questions from the Board, Mr. Weeks stated that the trees stipulated 4 years ago had not yet been planted as the addition was not yet built. The mobile coach would be lowered into place by a crane. Regarding the choice of a mobile facility for the equipment, he reiterated his comments from the 2007 meeting that, if the screening equipment was put into a building, they would have to own it. This way, they could lease it and it could be updated as new technology was developed.

SPEAKING IN OPPOSITION TO THE PETITION

Ms. Sarah Beaudoin, of 179 Hillside Drive, stated that her property abuts the location. She had just heard about the proposal and had not talked with Mr. Weeks. She was new to the neighborhood and understood that they had a doctor's office in the back yard and they can hear the air conditioning unit, but otherwise had no issues with them. Her concerns were that the office was growing and about possible health hazards from the equipment in the coach. She hoped that the decision could be postponed so she could further research the health issues and be more informed in her presentation.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Mr. Weeks stated that all the questions relating to the MRI equipment were being addressed in site review.

Chairman LeBlanc noted that the repositioning of the unit would take it to the front of the building, away from the residences, and the new addition would also serve as a buffer.

Mr. Jousse stated that he remembered that, in 2002, there was a vegetative shield between this property and the residential properties and asked if the applicants would be adverse to extending it the whole length of the property line. Chairman LeBlanc stated that would be up to the Board.

DECISION OF THE BOARD

Mr. Grasso made a motion to grant the petition with the stipulations attached to the previous granting of the variance for the addition, as well as that the air conditioning unit meet the residential decibel level at the property line.

Chairman LeBlanc asked if he would want to amend the previous stipulations to state that the arbor vitae screening should be extended along the entire length of the property line along Hillside Drive and Mr. Grasso stated, “yes,” and that the hours of operation be as previously stipulated. Mr. Jousse seconded the motion.

Mr. Grasso stated that granting the variances would not be contrary to the public interest as the property had been in place since the 1960’s and used as a medical facility for at least half of that time. Included in the special conditions was that the proposed use has a parking lot to one side and that the addition would be within the required setbacks. The stipulations would provide for screening and also the appropriate decibel levels for the air conditioning. He stated that the benefit sought could not be achieved by any other method as there was really no other way to situate the addition on this lot. With the stipulations, the spirit of the ordinance would be served by allowing adequate light and air and protecting the surrounding properties. He stated that there would be no benefit to the public in denying the petition and the value of surrounding properties would not be diminished.

Mr. Jousse stated that he had nothing to add.

Mr. David Witham suggested that the concerned abutter check the web site and see when the other Boards and Committees will be considering this project.

The motion to grant the petition as presented and advertised, with stipulations, was passed by a unanimous vote of 7 to 0. The petition was granted with the following stipulations:

- That the air conditioning unit be situated so that the decibel level at the property line meets the requirements of the ordinance.
- That, on the Hillside Drive side of the property, an arbor vitae screening be extended along the entire length of the property line.
- That the hours of operation will be as stipulated for the variance granted in January, 2002: from 7:00 a.m. to 8:00 p.m., Monday through Friday, and from 7:00 a.m. to 12:00 noon on Saturday, as well as by appointment for emergencies only on Sundays.
- That, as previously stipulated in 2002, the gravel driveway to Middle Road remain closed off.

- That, as previously stipulated in 2002, the lights in the parking areas be down shielded away from the abutting residential dwellings.

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6) Petition of **Creative Investors c/o Peter Morin, owner**, for property located at **405 Pleasant Street** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow a 10' x 15' two story addition with: a) a 1.5'± left side setback where 10' is the minimum required and a 15'± rear setback where 25' is the minimum required, and b) 54.3% building coverage where 30% is the maximum allowed. Said property is shown on Assessor Plan 102 as Lot 68 and lies within the General Residence B and Historic A districts.

**SPEAKING IN FAVOR OF THE PETITION**

Ms. Anne Whitney stated that she was the architect for the project and distributed a letter from the most affected abutter on the left side who supported the project. They were proposing a number of renovations. On the Pleasant Street side in the photograph she had submitted, they could see the structure and, behind that on page 2, a 2-story ell addition on the back side. The building was not in great shape and they would like to take down the ell and rebuild it in a slightly different configuration. In its current condition, it was not reasonable to renovate.

Ms. Whitney stated that they could see on the site plan how the left side sits on the property line. There was a 2-story addition in the back with a one story attached shed which they will be removing. She indicated these on the elevation drawings as well as where the 10' x 15' addition would be constructed. She outlined several options they had considered before deciding on this proposal which would also allow access to the back of the property. She stated that this was a very small house with about 1,500 s.f. They were trying to keep the square footage in the existing house while alleviating the property line and maintaining access to back yard. The existing coverage was 56% and, by taking off the 30 s.f. for the little shed, they would bring it down a little to 54.2%, which was fairly common for the neighborhood.

In response to questions from the Board, Ms. Whitney stated that they were planning to put a full foundation under the addition and move the bulkhead to the back. The building had been built around 1780, the ell sometime later, at least 100 years ago. They were retaining the garage as it had a better foundation than the house and the structure was in good condition.

**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. Witham.

Mr. LeMay stated that this would be a thoughtful improvement to the property which would have a positive effect on abutters. It was not contrary to the public interest to renovate a building while slightly reducing the lot coverage. The special conditions were that this was an older home which needed renovation and the applicants had well considered what could and could not be done. He stated that granting the variance would be consistent with the spirit of the ordinance and there was no benefit to the public in denying the petition. Rather than diminishing the value of surrounding properties, there was some evidence that it would be the opposite.

Mr. Witham stated that they were dealing with a nonconforming structure and this well thought out proposal would slightly reduce the nonconformance. There was no other reasonably feasible alternative. To meet the lot coverage, they would have to remove the garage altogether, which was not reasonable. The result would be a sounder structure which would meet current codes. In this part of town, a certain density is expected and the direct abutter supported the proposal.

Ms. Rousseau stated that they hadn't heard about the alternative of restoration rather than renovation. She was concerned about maintaining these historical properties.

The motion to grant the petition as presented and advertised was passed by a vote of 6 to 1, with Ms. Rousseau voting against the motion.

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7) 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 an irregular shaped 190 sf one story addition and relocated bulkhead creating 32.9%± 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.

SPEAKING IN FAVOR OF THE PETITION

Mr. Matthew Beebe stated that they would like to add a modest addition to the first floor living area, enlarging and relocating the kitchen and moving the laundry to that floor. On the submitted photographs, they could see the mudroom area, the porch at the back and the stairway. They met with Ms. Tillman and came up with 32.9% building coverage for which they were seeking relief. He noted that they were actually reducing the existing lot coverage, which would bring the property into greater compliance. The addition would add 90 s.f., but removing the stairs and mudroom would result in a net gain in open space of 86 s.f.

Mr. Beebe stated that they were also going to replace pavement in the back driveway with eco-grit, creating a permeable surface. They will be planting some grass and may eventually ask to move the driveway. Finally, and most importantly, they will be taking down the staircase as they will be converting from a 2-family back to a single family residence. He stated that they recognized the importance of light and air in planning the addition, which meets all other dimensional requirements.

Addressing the criteria, Mr. Beebe stated that the hardship was that the lot was 5,000 s.f. where 7,500 s.f. was required. Applying the minimum lot coverage to a smaller lot creates a hardship.

The proposal would not be contrary to the public interest as it was within the character of the neighborhood, the property would be improved and occupancy would be decreased, removing at least one parked car. He felt that it was in the spirit of the ordinance to allow a fair and equitable use of the property. Recognizing that this was a nonconforming lot, they were not asking for more than they needed and they were bringing the property into greater compliance. They had considered the option of a second floor over the addition, but didn't feel it followed the aesthetic they wanted. Justice would be done as there would be no harm to surrounding properties and the abutters were in favor. Mr. Beebe stated that, with the quality of the work they would be doing, the value of surrounding properties should be increased.

In response to questions from Chairman LeBlanc, Mr. Beebe stated that there was an efficiency size kitchen on the third floor now, which they would need to use while they were renovating, but then it would go away. They would be semi-occupying the third floor during the renovations and then would convert that floor into a bedroom and maybe a playroom.

Chairman LeBlanc asked when the stairs would come out. Mr. Beebe replied that they would like to use the stairs to get bricks down during demolition of the center chimney. They would be removed once they were no longer needed, which he estimated would be mid-to-late-Fall.

Ms. Rousseau stated she was not clear what he was demolishing, Mr. Beebe replied that it was a covered porch and a landing just outside the doorway into the mudroom. The addition would be replacing that.

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 Ms. Eaton.

Mr. Grasso stated that the proposed addition would be within the required setbacks resulting in 32.9% building coverage. He stated that this would not hurt the public in any way and they were removing the stairs which could be a problem in the winter. The special condition was a lot size of just over 5,000 s.f. where 7,500 s.f. was required. With a conforming lot, they would not need a variance. The applicants were proposing to build out back, which was the only option and needed building coverage relief as they were over the 25% allowed. He stated that granting the variance would be in the spirit of the ordinance as the lots in this neighborhood were small with many exceeding the lot coverage. In the justice test, there would be no benefit to the public in denying the petition. In an area of similar lots, the value of surrounding properties would not be diminished.

Ms. Eaton stated that there would be a benefit in reducing the occupancy from a two-family to a one-family. The use would be less intense and require less parking.

Ms. Rousseau stated that she agreed. The focus was on preserving a turn of the century house rather than demolishing it. Property values would be increased.

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

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8) Clarification of previously approved Variance concerning property **owned by John F. Grogan** located at **8 Central Avenue** concerning a second driveway to the property. Said property is shown on Assessor Plan 209 as Lot 17 and lies within the General Residence A district.

Chairman LeBlanc announced that this petition had been withdrawn at the request of the applicant.

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9) Petition of American Financial Realty Trust, owner, for property located at **off Daniel Street** wherein a Variance from Article III, Section 10-304(B) was requested to allow a prefabricated 4’ x 6’ metal and glass parking attendant booth less than 20’ in height where a minimum of 20’ in height is required for buildings. Said property is shown on Assessor Plan 107 as Lot 27 and lies within the Central Business B and Historic A districts.

SPEAKING IN FAVOR OF THE PETITION

Ms. Tracy Dodd stated that she was representing the Lessee, the Bank of America, noting that documentation had been submitted regarding the owners approval of their proposal. She stated that the purpose of the parking booth was to shelter the parking attendant and allow for easier monitoring of the existing lot. They were not changing the existing parking spaces and were staying within the footprint of the existing island. They will be removing vegetation in just one area, resetting the granite curb, putting in a slab and installing a booth on top. They needed relief because the required 20’ tall structure would be inappropriate. The actual height of the proposed booth was 9’8”. She noted that the site itself was shielded by vegetation and the booth couldn’t be seen from Daniel Street. They had worked with the Historic District Commission to find a style of booth which would be appropriate and fit the character of the neighborhood. Ms. Dodd stated that it would create an unnecessary hardship to be forced to build a larger structure. The function called for an accessory building and they want a structure appropriate for the use.

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

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

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

Mr. Witham stated that they had to look at the intent of ordinance. In requiring a minimum height, they were trying to keep some continuity in the streetscape, but they also had to work with the Historic District Commission to install an appropriate structure

Addressing the criteria, Mr. Witham stated that the public interest would not be affected as they were not going to change the character of the neighborhood in any way. This would be better than the current situation of having an attendant in a car with the motor running. The special condition creating a hardship was a district where even accessory structures were required to be 20' in height. A 20' high structure in a parking lot probably wouldn't pass HDC muster, so there was no reasonably feasible alternative. He stated that the spirit of the ordinance was not intended for this type of use and there would be no benefit to the public in denying the variance. An appropriate structure would not result in any diminution in the value of surrounding properties.

Ms. Rousseau stated that she did not agree with the architectural choices and decisions of the Historic District Commission and would not add to them.

The motion to grant the petition as presented and advertised was passed by a vote of 6 to 1, with Ms. Rousseau voting against the motion.

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10) Petition of **Karl E. Hahn, owner**, for property located at **340 Odiorne Point Road** wherein the following were requested: 1) an Equitable Waiver as allowed in RSA 674:33-a to allow a previously constructed 16' x 26' one car garage with a 9.56'± right side setback where 10' or 75% of the height of the structure, whichever is greater, is the minimum required, and 2) a Variance from Article IV, Section 10-402(A & B) to allow a 5' x 16' one story storage shed attached to the garage with a 4.58'± right side setback where 10' or 75% of the height of the structure, whichever is greater, is the minimum required. Said property is shown on Assessor Plan 224 as Lot 10-18 and lies within the Single Residence A district.

**SPEAKING IN FAVOR OF THE PETITION**

Attorney Bernard W. Pelech stated that they were requesting two things, first, an Equitable Waiver of Dimensional Requirements for an existing garage and, second, a Variance for a storage shed attached to the garage. As pointed out in the departmental memorandum, a survey of the property had been done which determined that the garage, which was thought to be 10' from the property line was actually 9'6". He stated that the Board could grant an Equitable Waiver if an encroachment was due to an error in measurement and not lack of knowledge of the ordinance or intent to obfuscate. The error was not discovered until the structure was substantially complete and the cost to remedy the miscalculation by cutting off inches from the garage would not be reasonable.

Attorney Pelech maintained that the conditions to grant the Equitable Waiver and allow the existing garage were met. He submitted, and read from, a letter from Mr. James Archibald of 330 Odiorne Point Road who urged approval and indicated that the value of his property would not be affected. He also submitted photographs which showed the storage shed with 6' high arbor vitae screening the shed and garage.

With regard to the variance for the storage shed, Attorney Pelech stated that the public interest would not be affected by this proposal which would not alter the essential characteristics of this neighborhood of large homes on large lots. Several neighboring properties had detached garages somewhat adjacent to each other. He maintained that the proposal would not conflict with basic zoning objectives or affect the public health, safety, or welfare. The spirit of the ordinance would be met as this was a reasonable accessory to a residential use. The shed would be 4.5' away where 10' was required, but would not encroach on abutters and would allow light and air.

Attorney Pelech stated that there would be no diminution in property values. If anyone were to be affected, it would be Mr. Archibald, who had no problem with the proposal. In the justice test, there would be no benefit to the public in denying the petition that would outweigh the hardship that would be placed on the applicant. The special condition creating a hardship was that the shed was constructed along with the garage. There was also a unique situation with the building and the land, which narrows in an irregular shape to the front. They want to put the storage in the least conspicuous space. There was no reasonable alternative if they want to attach the shed to the garage and it was not feasible to move it somewhere else where it might raise the objections of neighbors.

Mr. Jousse asked when the garage was built and Mr. Steve Holt from MSC replied that it was under construction from last spring to the fall. In response to a further question from Mr. Jousse, Mr. Holt stated that the shed was built at the same time.

Mr. Jousse stated that he didn't know when the photograph was taken, but it was apparent that the garage was standing on its own and there was no shed to this side of it. On the photographs they were provided, the shed has the same type roof as the garage. Looking at this photograph, the hip roof stopped at the edge of the garage and there was no extension of what would be the shed. Even the back of the garage was painted the same as everything else. That indicated to him that the shed was built at a later date.

Mr. Holt stated that he was not sure of the date of the aerial photograph. Although you couldn't see it in the photograph, they were putting the stone facing on the garage as of last fall. And, as of last fall, the shed was on there. If they looked at the photographs he had just provided, they would see the stone facing on the garage while, in the picture, you cannot see the stone facing.

Mr. Jousse stated he was not talking about that side of the building. Mr. Holt stated that he had asked in general about when the garage was being built and the stone facing was part of the garage being built. Mr. Jousse reiterated that the area in question which was encroaching into the setback was the back of the garage, not the front. The back of the garage had clapboard. It seemed to him that the shed was added on afterward, not at the same time.

Ms. Eaton asked where the access was to the shed; was there access from the inside of the garage? Mr. Holt stated that the access was where the truck was parked, as shown in the aerial photograph, behind the arbor vitae. There was no access from the garage.

Directing his comments to Attorney Pelech, Mr. Witham stated that he was leaning to vote to grant the Equitable Waiver, as it could well be an honest mistake. But, then the shed appears,

which clearly cuts into the 10' setback. It seemed they wanted to have it both ways – an honest mistake with the garage and then the shed obviously in the setback. He wondered how the shed had appeared.

Attorney Pelech stated he did not know what had happened. He had only been involved with the project for three days, so had deferred to Steve Holt.

**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**

Stating that he would like to take the two items separately, Mr. Witham made a motion to grant the Equitable Waiver as presented and advertised, which was seconded by Mr. Jousse.

Mr. Witham stated that he believed that an honest mistake had been made in measuring and what was supposed to be 10' was actually 9' some. He didn't feel this changed the intent of the zoning.

Mr. Jousse agreed.

Mr. Grasso wondered if they needed to address the letter from the Public Service Co. of New Hampshire concerning the extension into their easement of the garage and shed.

Chairman LeBlanc stated they did not – those issues would be solely between the owner and the utility company.

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

Mr. LeMay made a motion to deny the variance, which was seconded by Ms. Eaton.

Mr. LeMay stated that it was obvious from the presentation and photographic evidence that the shed had been added on after the main garage and, in general, it held no weight with him when a variance was requested after the fact. Because the applicant went ahead with the structure does not grant any rights. He felt that whoever built the garage knew where the 10' setback line was.

Ms. Eaton added that there were no special conditions in this property that would warrant placement of the shed within the setback.

Mr. Witham stated that they have to consider the shed as if it were not already built. If they had seen the plans before, an obviously reasonable alternative would have been to fit the shed along the side, which would be less obtrusive to the abutter.

Ms. Rousseau felt it would be wasteful to make the owner tear down the shed just to make a point.

The motion to deny the variance was passed by a vote of 6 to 1, with Ms. Rousseau voting against the motion.

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Mr. Witham made a motion to suspend the 10 o'clock rule, which was seconded by Ms. Eaton and approved by unanimous voice vote.

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11) Petition of **Raymond J & Maryrose Richer, owners**, for property located at **85 Woodworth Avenue** wherein a Variance from Article III, Section 10-302(A) was requested to allow a 12' x 22' roof over an existing deck with a 22'6"± rear setback where 30' is the minimum required. Said property is shown on Assessor Plan 243 as Lot 35 and lies within the Single Residence B district.

**SPEAKING IN FAVOR OF THE PETITION**

Ms. Maryrose Richer stated that they would like to put a roof over an existing deck as there was too much sun in the summer and, in the winter, the snow comes in and the slippery deck was a problem for the grandchildren.

In response to questions from the Board, she stated that the deck had been there for 12 years. They wanted to extend the roof to the edge of the deck rather than stopping at the edge of the house so that the property would look balanced from side and back. It gave it more support to come to both sides and make it even. She confirmed that the deck protruded into the yard beyond the house and that all they wanted was a roof. The deck would not be enclosed.

**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. Grasso.

Ms. Rousseau stated that she saw no evidence that the variance would be contrary to the public interest. Regarding the special conditions and hardship, she believed this was a reasonable use of the property. She had no issues regarding the fair and substantial relationship referenced under the Simplex analysis and saw no evidence that the variance would injure the public or private rights of others. There would be no injury to abutters. She stated that the variance was consistent with the spirit of the ordinance and substantial justice would be done as the property

owner could use their property in the way that they chose. This was a minor request which would not result in any diminution in the value of surrounding properties.

Mr. Grasso stated that the request to add a roof over an existing deck, which would not be enclosed, was a minimal request which would help the applicants enjoy the use of their home.

Mr. Witham stated that the use of the property and house probably was not going to change. The deck would still be a deck. It was just going to have a roof. It would not be living space and there would be no further encroachment. He didn't see any adverse impact on the neighbors. It would not be reasonably feasible to ask the applicants to cut in half the usable space they were trying to gain.

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

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12) Petition of **Jose Luis San Miguel and Myong S Trest San Miguel, owners**, for property located at **24 Holmes Court** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow: a) a 16' x 21' two story garage/living space/roof deck addition with a 0' rear setback where 25' is the minimum required and a 0' left setback where 10' is the minimum required; and b) 60.2%±% building coverage (including a 4'4" x 6' entry addition) where 30% is the maximum allowed. Said property is shown on Assessor Plan 101 as Lot 15 and lies within the General Residence B and Historic A districts.

SPEAKING IN FAVOR OF THE PETITION

Mr. Joseph Almeida distributed some photographs, along with two letters of support from immediate abutters and a neighborhood map illustrating the density. He stated that this was a very tight neighborhood with no lots complying with current zoning. They had gone to all the abutters on both streets and addressed all of their concerns in the design so that there was now no negative feedback. This was an existing 2½ story woodframe structure with an attached, water-damaged, garage. There were 2 bedrooms and a single bath. This had been a neglected rental property with minimal upkeep and they planned substantial renovations which would enhance the value of abutting properties. There was a large elevated wood deck which was a source of contention to the neighbors and would be removed, creating more open space. He noted that the current setback was 0' and they would be building on the existing foundation. One of the hardships was that they have to drive to Walnut Street and step through a narrow pinch point, almost literally on the neighboring property, to enter the house. The only other way was to enter through the basement. For this reason, they were also requesting a small entry off the back of the house.

Mr. Almeida stated that the structurally unsound garage would be replaced on the existing foundation and they would like to expand an existing 2nd floor bedroom over 2/3 of the garage with the rest a second floor deck. The 2nd floor bedroom would be 8' back from the sideline, the deck 0'. One of the abutters' concerns was lack of drainage and they would be removing a good portion of the large paved driveway in back. He indicated various features on his plans and elevations. They were also limited by having to comply with the historic nature of the area.

When Ms. Rousseau asked if they had considered renovation, Mr. Almeida stated that the framing of the garage, which was built in the 60's, was deteriorating and the garage was taking on water. It would be difficult to save.

Ms. Eaton asked about the existing lot coverage. Mr. Almeida cited 60%, but Ms. Eaton indicated that was the proposed. Mr. Almeida stated that the lot coverage would actually be less because the removal of the deck hadn't been included in the calculations. A brief discussion followed about whether the 175 s.f. deck was more than 18" off grade and how much of a reduction there would be in the proposed lot coverage if its removal were included, which Mr. Witham concluded could be at least a 5% reduction.

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

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

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

Mr. Witham stated that he had concerns about the 0' setback, but they would be using the existing foundation and it would not make sense to cut the foundation. While the lot coverage was double the amount allowed, they were looking at a reduction of 5% to 10% over what existed now and, in looking at other lots in the area, 60% was probably the average. He noted that this was a well thought proposal and he didn't see any gain to the City's cultural heritage to try and preserve a 1960's flat roof garage.

Mr. Witham stated that granting the variance would not be contrary to the public interest as they were simply going to maintain an existing setback, typical of the area, and the character of the neighborhood would not be changed. The special conditions were the tight lot and the fact that the foundation was in place which it made sense to reuse. The only way to meet the lot coverage would be to cut the house in half, which was not reasonably feasible. He stated that it would be in the spirit of the ordinance to improve properties in a respectful manner. The density was typical of other lots on the street. In the justice test, there was no benefit to the public in denying the variance that would outweigh the injustice to the homeowner. The feedback from the neighbors was positive and there should be no diminution in the value of surrounding properties.

Mr. Jousse stated that there was a definite hardship in the lot. He had viewed the property and the houses were so close it took a while to distinguish which structures belonged to which lots.

Ms. Rousseau stated that it was in the language of the master plan to value historical neighborhoods. There were plenty of larger homes in the suburbs and it was not in the public interest. She was not willing to trade lot coverage for knocking down 200 year old walls.

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

6 to 1, with Ms. Rousseau voting against the motion.

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**III. ADJOURNMENT**

It was moved, seconded and passed to adjourn the meeting at 10:50 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary