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

EILEEN DONDERO FOLEY COUNCIL CHAMBERS

7:00 p.m. **MARCH 17, 2009**

MEMBERS PRESENT:	Chairman Charles LeBlanc, Vice Chairman David Witham Carol Eaton, Thomas Grasso, Alain Jousse, Charles LeMay, Arthur Parrott
EXCUSED:	Alternates: Derek Durbin, Robin Rousseau
ALSO PRESENT:	Lucy Tillman, Chief Planner

I. OLD BUSINESS

A) Approval of Minutes – January 27, 2009
Approval of Minutes - February 17, 2009

In separate motions for each meeting, it was moved, seconded and passed by unanimous voice vote to accept the Minutes as presented.

~~~~~~

II. PUBLIC HEARINGS

1) Settlement proposal for Docket # 08-E-541 Rockingham County Superior Court concerning **property owned by Jonathan W. Sobel, Trustee of the Jonathan W. Sobel Revocable Trust,** located at **49 Sheafe Street**. Said property is shown on Assessor Plan 107 as Lot 21 and lies within the Central Business B and Historic A districts.

Chairman LeBlanc read into record a memorandum from City Attorney Robert Sullivan outlining a proposed settlement regarding this property and the recommendation of the Legal Department. He asked if any member of the public would like to speak to the matter. With no one rising, he declared the public hearing closed.

DECISION OF THE BOARD

Mr. Jousse moved that the case of Sobel v. City of Portsmouth Zoning Board of Adjustment be resolved in accordance with the recommendation of the City Attorney. The motion was seconded by Mr. Grasso.
~~~~~~

Mr. Jousse stated that this was a settlement that would be beneficial to all parties without going to court, which would involve quite a lot of time and expense for all. He felt this was the best possible settlement and noted that all parties were in agreement. To the best of his knowledge, this would close the case.

Mr. Grasso agreed, stating that this was a decent compromise by all parties involved which would allow the applicant to move forward with the planned improvements to his property.

Mr. Witham stated that he felt lowering the height one foot was barely a compromise at all and a rational and fair judgment did not prevail in this situation. The 12" less in height was going to have minimal impact on the issues which did not pass muster with this Board, which were the scale of the project and the impact on the area. This had also been the concern of the abutters, who did not oppose the idea "per se." He felt the abutters had worked hard and done everything they thought was right but, in the end, their backs were up against the wall due to a technicality that was not on their part. Because all parties did agree to the settlement, he would support the motion, but felt it was unfortunate.

The motion that the case of Sobel v. City of Portsmouth Zoning Board of Adjustment be resolved in accordance with the recommendation of the City Attorney was passed by a unanimous vote of 7 to 0.

~~~~~~

2) Petition of **Edmond C. Tarbell, owner**, for property located at **75 Court Street** wherein the following were requested: 1) a Variance from Article III, Section 10-303(A) to allow an existing office unit to be converted into a fourth residential apartment in a building containing three residential apartments and being on a lot having 4,573 sf of lot area where 30,000 sf (7,500 sf per dwelling unit) of lot area is the minimum required for four dwelling units**,** and 2) a Variance from Article XII, Section 10-1204 and Section 10-1201(A)(3) to allow four nonconforming parking spaces to be provided where six parking spaces are required and to allow said parking spaces to be arranged to park one behind another and back into the street. Said property is shown on Assessor Plan 116 as Lot 20 and lies within the Mixed Residential Office and Historic A districts.

SPEAKING IN FAVOR OF THE PETITION

Mr. Edmund Tarbell stated that he was the owner of 75-77 Court Street. He wanted to reactivate as an apartment the unit he had used as his office for over 30 years. He felt a rental use would be less intensive than his office and he noted that a kitchen and bath were still in the unit. Parking would also be different as the zoning requirements had changed since 1979.

Chairman LeBlanc asked how long it had been his office and Mr. Tarbell responded that he bought it in '71 and it had been a real estate office since '79. Before that it was an apartment. When Chairman LeBlanc asked if he was talking about the whole building, Mr. Tarbell stated it was three rooms, out of twelve.
~~~~~~

Ms. Tillman clarified that the property had consisted of a four-unit building and Mr. Tarbell had used one for this office, with the other three as apartments. He was looking to turn back the 4th unit to residential use.

In response to parking related questions from Ms. Eaton, Chairman LeBlanc and Mr. Grasso, Mr. Tarbell explained that the carport would take two cars and then there would be one behind the other on the street. Parking had not been a problem because of the availability of on-street parking and nearby city parking. There three cars and they cooperate in moving cars when necessary. There were currently three cars. With the two parking spaces along the building, the cars had to be moved to let the others in the back out, but only if the neighbors at 73 Court Street had their cars parked alongside their building. Otherwise, they were free to go. He stated that the cars park in the same places in the winter and they shovel out.

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

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

Mr. Parrott made a motion to deny the petition, which was seconded for discussion by Mr. Grasso.

Mr. Parrott stated that he was concerned that this was a fairly large building on a fairly small lot. The unit had functioned as a business for a long time and the way the lot was arranged resulted in a poor parking arrangement. One car blocked the other three forcing that car to back out onto the street to allow the others out, which was exactly the type of situation the Zoning Ordinance was trying to avoid. He also noted that the on-street parking was tight. He stated that the lot area per dwelling unit was minimal and the lot was tight as it was with respect to light and air and yard space. He felt three residential dwelling units was more than enough for a lot of this size and the difficult parking was not suitable for a fourth unit.

Mr. Grasso stated that his concern was with parking. While there were three cars there now, that was the minimum. If approved and they ended up with two cars per unit, there was a possible total of eight cars.

Mr. Witham stated that he had been on the fence, as it was advantageous to have these mixes of uses. Keeping the unit as an office, however, had different parking requirements which helped to mitigate the residential parking, even with regard to hours of use. He understood it was originally an apartment, but the owner had maintained a reasonable use of the property with it as an office. He believed the rent would be similar so they would not be handcuffing the owner by not granting the change in use.

Mr. Jousse stated that he had no problem with converting an office use to a residential one because of the need for housing, but he had a problem with vehicles backing onto Court Street where traffic had increased dramatically.

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

~~~~~~

3) Petition of **D'Angelo, Inc., owner**, for property located at **1981 Woodbury Avenue** wherein the following were requested: 1) a Variance from Article IX, Section 10-907(A)(2)(b) to allow 85± sf of internally illuminated channel letter flush mounted signage where 65 sf of signage is the maximum allowed, and 2) a Variance from Article IX, Section 10-901(E)(2) to allow said sign to be located above the level of the roof where signs are not allowed to be located. Said property is shown on Assessor Plan 215 as Lot 7 and lies within the General Business district.

SPEAKING IN FAVOR OF THE PETITION

Attorney William Tanguay stated that he was there with Keith McLaughlin from D'Angelo, Inc., who was requesting a sign variance for the old Staples space in their plaza, which had been vacant for two years. Dollar Tree would like to rent half of the space but they wanted a sign consistent with their prototype. A previous application had been withdrawn after the Planning Department advised that the requested size was too much. Their office agreed and tried to design something that would be reasonable and consistent with the plaza and the area, 85 s.f. where 65 s.f. was permitted. He stated that what was unusual was that the 12,000 s.f. unit was located in the corner of the building. The Zoning Ordinance was based on the linear feet of frontage for each unit which, in this case, was only 66 feet, which left a fairly large store with a very small sign.

Referring to the sign on display, Attorney Tanguay indicated the corner and the intersection. They needed a sign that could be seen and it was difficult to see the corner from an intersection which was 320 feet away. The grade was also lower than the intersection, which increased the necessity for a sign big and high enough to be seen as it was blocked by a sandwich shop. He displayed a picture of the parking lot illustrating the difficulty in seeing the corner storefront, particularly with snow build-up. He stated that a traditional unit of 12,000 s.f. would have 100 linear feet of frontage, which would allow their proposed sign. He pointed out the layout of the plaza in their material and noted that the abutting 12,500 s.f. unit would not require a variance as it had 125 linear feet of frontage.

Attorney Tanguay stated that they were proposing a sign consistent with the size of the unit, which was not a huge variation from the allowed square footage and was smaller than the former Staples sign. While the sign would rise slightly above the roofline, it would not appear to do so. He read from the ordinance regarding the erection of signs. They need to attract foot traffic and anything smaller than the proposed 3' high letters, or lower, would be ineffective. While the plaza was not large enough for an anchor tenant situation, the proposed store would fill the same role, drawing foot traffic and helping to renew the plaza. If it were an anchor tenant, the proposed size would be allowed without a variance.

Regarding the value of surrounding properties, Attorney Tanguay stated that this was a commercial sign consistent with others in this commercial area. In the spirit of the ordinance, it would be appropriate and conducive to business uses to allow people to see the sign. There would be nothing contrary to the public interest in granting the variance.
~~~~~~

The associated hardship resulted from all the reasons he had already stated.

Mr. Grasso asked for the record how far above the ground the letters for Dollar Tree would be. Attorney Tanguay stated the print showed 8', a gap, 3' and another gap, and 3' again, so it would be 14' plus 2 gaps.

Mr. Keith McLaughlin, Director of Real Estate for D'Angelo, Inc., stated that he believed the top of the roof was 14½'. With the space been empty for two years, they were excited to have the interest of this chain. They had gone into lease terms with Dollar Tree, whose standard sign letter size was 48", dramatically different from the standards in the Zoning Ordinance. After meeting with them, Dollar Tree agreed to reduce the size. If the variance was not granted, Dollar Tree would terminate their interest in this location and look elsewhere. That was the hardship. He continued that the plaza looked tired and this was an opportunity to fix it up and make it look nice. Having Dollar Tree as what they would consider an anchor tenant in the corner was a start. They were allowed by right, as he understood it, to have letters at the top of the roof. That appeared to be about 15' high off the ground, but it did push these letters to be roughly 10½" higher than what the ordinance would allow. Chairman LeBlanc asked if this was going to be a lighted portal into the store and Mr. McLaughlin responded that these were just channel letters. They would also be putting in a new glass vestibule where currently it was all brick.

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 approve the petition as presented and advertised, with the stipulation that the top of the letters not exceed 15' from the ground. The motion was seconded by Mr. LeMay.

Mr. Grasso noted that the location had been empty for a while. Given the location and the distance from the intersection, the additional 20' in relief was not too much to ask for.

Mr. Grasso stated that it would be in the public interest to identify a new store to the area. The special conditions included the odd shaped building. Had the store been more linear and not in a corner spot, the sign would not be in front of them. He stated that, given the distance from the intersection, smaller letters wouldn't work so there was no more feasible method. Granting the variance would be consistent with the spirit of the ordinance and result in no harm to the public. He didn't see how the value of surrounding properties would be diminished.

Mr. LeMay agreed. In terms of the public interest, the sign was not overly large given the size of the plaza, the uniqueness of the corner location and the way the building is set down from the road. The ordinance bases the sign size on a linear formula, which doesn't take into account a complex situation like this – a large unit with small frontage.

Mr. Jousse stated that he would not support the motion. This was a busy intersection and the way the traffic lights were situated, you have to be in the correct lane to make the turn. A 120 s.f. sign wouldn't make a difference unless the person knew where they were going in the first place.

Mr. Witham stated that there were a few areas which swayed him. The formula was very simplistic and doesn't work out fairly in this situation. If you look to the available space to the right, they would be allowed a sign twice the size. Another unit to the left was half the size but would be allowed approximately the same amount of signage. The store will act as an anchor which, if it fit the exact definition, would be allowed one and a half times the signage, or 99 s.f. The only other method would be to rent 2,000 s.f. more for the frontage, which was not reasonable. He didn't see any aesthetic issues and the height was appropriate. If it were lower, people would be hitting their heads. He felt the applicant had eyeballed the height and cut himself short and he asked the maker of the motion if he would amend his stipulation to allow them 16' to the top of the letters.

Mr. LeMay agreed to amend his stipulation.

The motion to grant the petition as presented and advertised, with the stipulation that the top of the letters on the sign be no more than 16' above grade, was passed by a vote of 5 to 2, with Messrs. Jousse and LeBlanc voting against the motion.

~~~~~~

4) Petition of **Great McDonough Street LLC, owner, Superior Towing, applicant**, for property located at **135 McDonough Street** wherein the following were requested: 1) a Variance from Article II, Section 10-207 was requested to allow outdoor storage of 15 vehicles for 30 days or more in a district where outdoor storage of vehicles is not allowed, and 2) a Variance from Article XII, Section 10-1204 to allow an undelineated area for the parking of 42 vehicles for the existing uses in the building plus 15 parking spaces for the storage of vehicles, for a total of 57 required spaces, where the application states that 50 undelineated parking spaces are available. Said property is shown on Assessor Plan 144 as Lot 47 and lies within the Mixed Residential Business district.

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernard W. Pelech stated that he was there with Mr. Tim Flynn, a principal of Great McDonough Street LLC, as well as Kevin Gilman of Superior Towing, the applicant. He briefly outlined the history of the old Continental Shoe Factory with the current primary use as multiple storage units as well as artist studios and offices. In general, this was a mixed use with, he added, storage of vehicles in the rear of the building, which has been ongoing since the property was zoned industrial. The industrial zoning remained until the 1995 rezoning, at which time it was placed into a mixed residential business district.

Mr. Pelech stated that the requested use was not something that had not been there before. Mr. Gilman operated his automobile towing and storage business in the back of the building up until approximately July of 2007, when he left the site. The Board had granted a variance to allow the business on the corner of Bartlett Street, but the Portsmouth Police Department would
~~~~~~

not put them on their list because that site did not have storage for 10 vehicles to be kept over 30 days. Mr. Gilman would like to move back that part of his business and the Planning Department has determined that the nonconforming use has now expired and a variance would be required.

Mr. Pelech stated that the owner had erected a chainlink fence around the storage area. They had produced a list of the companies in the building, which accounted for less than 12 vehicles, none of which park behind the building. The back was not even plowed in the winter because it was not used.

Attorney Pelech stated that it would be in the public interest to provide a facility within walking distance of downtown where people could retrieve their towed vehicles. No additional municipal services would be required and there had been a fence up since the 70's with no break-ins. The special condition was that this was not a lot that was conducive to a Mixed Residential Business zone due to the size and location of the lot. As they could see from the tax map and submitted plan, the lot was eight to ten times the size of the remainder of the lots in the district and contained a huge building covering 50% - 60% of the area. It was surrounded on three sides by streets, with the railroad yard behind as the only true abutter. The uses in the structure were harmonious, with individual self storage as the primary use. There had always been storage behind the building and if someone had a vehicle or boat to be stored, Mr. Flynn allowed them to do so.

Attorney Pelech stated that there was no fair and substantial relationship between the purposes of the ordinance and the restriction on the property. Given a piece of property like this with the compound and fencing around it, it was difficult to say no outdoor storage. He didn't think the outdoor storage behind the building affected the neighborhood and there had been no problems in the past. The public or private rights of others would not be injured and there would be no harm to the general public. The use had existed legally up to few years ago because it had been in place prior to zoning. Regarding the number of parking spaces, the area had never been paved, so there were no striped parking spaces. The area was rarely used by the occupants of the building as they had adequate parking on the street and in the municipal lot across the street. He stated that the spirit of the ordinance was to encourage compatible uses. This use was compatible with the site and existing uses and would not be detrimental to abutters. He stated that, in the justice test, denying the variance would not benefit the public but would create a hardship for the owner and applicant.

Mr. LeMay noted that he had illustrated the lot with the parking spaces marked in. Attorney Pelech stated that the number of spaces was scaled to the dimensions of the lot assuming an 8½' x 19' parking space. When Mr. LeMay asked if he was assuming that this was paved and striped way in some traditional way, Attorney Pelech stated that was approximately the number that could fit and meet the code. Mr. LeMay noted that the presentation had referenced storage for 10 vehicles, while the application listed 15. Attorney Pelech clarified that Mr. Gilman proposed to store up to a maximum of 15 vehicles over 30 days.

Mr. Parrott and Mr. LeMay posed a series of questions regarding the circumstances under which a vehicle would be brought to the lot, how long a vehicle would be stored there and whether there was a maximum length of storage time. Attorney Pelech stated that they had

phrased their application in conformance with the ordinance so the way it was written, vehicles could come from anywhere and be placed there and left indefinitely. They were, however, open to a stipulation setting a maximum of 60 days storage. Mr. Kevin Gilman, of Superior Towing, outlined how they have to process a vehicle within 10 days of being towed and then the Department of Motor Vehicles could take 30 to 45 days more. At one point, he stated that the only cars that would be stored there would be ones that had been abandoned and, at another point, stated a vehicle could be picked up within 2 to 4 hours or sit there for 3 to 5 days. Usually it was just the abandoned vehicles which sat there. In response to a further question, he stated that the Bartlett Street lot would be the main yard, but anything sitting there over 14 days had to be removed according the Police Department which was the reason for this lot.

Mr. Jousse asked if they would be renting or leasing that whole parking area and Attorney Pelech stated it would just be the 15 spaces. The owner would still have control over the other 35 or so spaces and could park a vehicle there for as long as he wanted.

SPEAKING IN OPPOSITION TO THE PETITION

Mr. Ted Mottola stated that he was representing the Islington Creek Neighborhood Association and submitted the signatures of 25 neighbors in opposition. Their neighborhood was densely populated and there were a lot of pedestrians, including children, who would be affected by increased traffic. He felt the use would be inconsistent with the intent of the ordinance which did not allow such operations in the zone because it was ultimately a residential area. He stated that the neighborhood would be negatively impacted by the noise of trucks operating 24/7 and vehicles stored long-term would attract unwanted attention. He outlined some history of the neighborhood and stated that granting the petition would affect potential home buyers. Their Association had gone a long way working with various city agencies on traffic and safety and wanted to be on record as opposing this petition.

Mike Hilliard stated that he was speaking for his dad, Wayne Hilliard, who was an abutter and was against granting the variance. He passed out photographs of the lot. He couldn't believe they were considering having a tow truck drop off vehicles in the back lot. When Chairman LeBlanc and Attorney Pelech confirmed that was the proposal, Mr. Hilliard stated that he didn't see how a truck would be able to maneuver in the wedge shaped lot, which was bounded by a building and a chain link fence. Where was the snow going to go? The neighborhood was dense and a 24/7 operation with back-up beepers on tow trucks in the middle of the night would diminish property values.

Ms. Mary McDermott stated that she lived on Rockingham Street and was a founding member of the Cabot Street and Islington Street Association. She agreed that a 24/7 business with big equipment was not appropriate for a family friendly neighborhood. She noted that Attorney Pelech had said the location was ideal because it was within walking distance from downtown for someone to get their car, but the applicant had said the lot wouldn't be used for that. Her other problem was that the accessway was from Cornwall Street and there was no curb cut for that lot where it shows a roadway on their submitted plan. She stated that her main issue was maneuverability, particularly in the winter.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Mr. Gilman noted that they had been at the site for three or four years and Capital Recovery had been there for fifteen years. Most of the abutters seemed not to know they were there so, obviously, there was no detriment. He stated that the snow stays within the fenced in area. When they enter from Cornwall Street, there was a fully sufficient lot to the left which would allow the trucks to make a u-turn in. The headlights would only affect the house on the corner of Cornwall Street and the railroad yard and there were no problems before. When the trucks exit, they turn right off Cornwall Street onto McDonough Street and enter Islington Street from Cabot Street.

Mr. Jousse noted that the plan showed a gate at both ends of the parking area and Mr. Gilman stated that they do not use the gate on the Cabot Street end because of the spaces for the tenants. They would only enter from Cornwall Street. Chairman LeBlanc asked if they would, in fact, be towing cars there during the night or would they go to the Bartlett Street lot. Mr. Gilman replied that most would go to Bartlett Street, but in a snow emergency, they might use this lot. They did that before and there was no problem.

Mr. Witham asked if, shy of a snow emergency, the vehicles could go to Bartlett Street and the use of this lot could be restricted to between 9:00 a.m. and 11:00 a.m. when the vehicles stored for 14 days at Bartlett Street could be transferred. Mr. Gilman replied that, as long as he wasn't restricted from going in at other hours to release vehicles, the towing could be restricted to 9:00 a.m. to 4:00 p.m. Mr. Witham asked if he might go there twice in a day and Mr. Gilman stated unless there was a snow emergency. He agreed with Mr. Witham calling this lot basically an overflow lot and stated that there was no office on site and only the vehicles awaiting processing.

Mr. LeMay noted that Mr. Gilman had testified that the whole lot adjacent to Cornwall was adequate for making a u-turn and backing into the area. Mr. Gilman stated that was correct and their trucks were roughly 30' long. Mr. LeMay asked if that was the same lot they were using to justify the parking space count and Mr. Gilman stated that nothing was outside that gate. Mr. LeMay stated he was not asking that. One of the requested variances says 57 required spaces where the application lists 50 as available. His point was that those weren't available if the area had to be used to turn around and back into where the 15 storage spaces were. Mr. Gilman stated that the space they were asking for was within the steel gate directly behind the building with the chain link fence. When Mr. LeMay asked, "For your 15," Mr. Gilman responded his 15 and for the others. There was easily room for 45 or 50 cars back there. It was wide at the end and others pull box trucks in and back up to a loading door just inside the door. During snow removal months, it would be more than adequate for 25 to 30 vehicles.

Mr. Parrott stated that he had studied this and didn't know what he was being asked to vote on because the sketch they provided showed no dimensions for the parking spaces or for the maneuvering aisles. As required by the ordinance, these should be 18' for a one-way aisle and 24' for a two-way, which were not excessive. There were parking spaces indicated where they said they would be swinging around and the driveway, or whatever the access was off McDonough Street, had no dimension. This cried out to have an engineered plan which laid out what was required by the City.

Mr. Gilman stated that he had not prepared the packet. He reiterated that he had been a tenant there for 4 or 5 years with no one knowing. Regarding Cornwall Street, he asked what Mr. Parrott's requirement was for a city street.

Mr. Parrott stated that he had just said what it was for parking lots and Mr. Gilman responded that was the width of the curb cut that had been mentioned, which he stated did not exist. It was a street so, of course, it was no curb. He asked if Mr. Parrott understood and Mr. Parrott responded that he had his answer.

Kevin Jonah stated that he was a resident of Portsmouth there for another petition. He felt that, even if restrictions and maximum limits were added to this, it would still mean more law enforcement and it would be a detriment to the neighborhood to bring this back.

Mr. Timothy Flynn stated that he was the owner and that the fenced in area and the parking had been grandfathered. There had been parking there since 1970 including campers and boats. The City had made him put up a fence to secure the lot with openings on both ends. Part of his business was inside and outside storage and he's had someone hauling cars in there 24 hours a day. Now, all of a sudden because the City changed zoning, you can't park. He didn't feel it should affect him and he should have to hire an attorney when all had been approved by the City 30 years ago. He had spent a lot of time fixing up the property when the neighborhood had problems. The people now in the neighborhood would not have moved in when he moved in. This was a commercial building with trucks coming in all the time and he felt that they were trying to take his rights away from him. The people shouldn't have moved there if they did not like this.

Mr. Mottola asked which spaces were going to be used for Superior Towing vs. the owner's storage and who was going to regulate how many cars were being stored and for how many days. Chairman LeBlanc stated that Superior Towing had 15 spaces in the fenced in area and did not know who policed it. Mr. Mottola said so any amount of those spaces could be used by Superior. Chairman LeBlanc stated that the applicant had represented to them that he was going to use 15 spaces and noted that the owner could put more vehicles back there if he wished. Mr Jousse added that he was quite sure that the owner would ensure that no more than 15 spaces were used by the applicant.

Ms. McDermott stated that the lot around Lot 48 shows 15 spaces on it plus another approximately 32 spaces behind the fenced area. The applicant was saying that he was going to pull in off Cornwell Street extension and go through that lot and be able to turn around but that's where they were showing the 15 spaces to be parked. She reiterated her question on the curb cut and stated that there was a disconnect here somewhere.

Attorney Pelech stated that the curb cut was off McDonough Street as shown on the plan. The gated area was the area behind the building. The 18 spaces surrounding was not the area they were going to utilize. Nobody parked there.

Chairman LeBlanc asked if Superior Towing would come off McDonough Street onto Cornwall and then back into the area in back. Mr. Gilman stated that, technically, it would not be off McDonough Street. As he said, it would be from Islington Street to Cornwall. To the

left side of Cornwall Street was this parking area with plenty of room to swing a truck around, even one loaded with two cars. He had done this for years. There was absolutely no curb cut from McDonough Street to the dead end of Cornwall Street. When Chairman LeBlanc stated that, then, they had a real problem because some of the spaces they were delineating was where they would be driving through, Mr. Gilman replied that the space was available for parking but not used. They had all seen how he pulled into Bartlett Street and this was ten times that area. He never backed off of McDonough Street, but pulled into the lot off Cornwall Street.

DECISION OF THE BOARD

Ms. Eaton made a motion to deny the petition as presented and advertised for discussion purposes. The motion was seconded by Mr. LeMay.

Ms. Eaton stated, for a start, that the site plan was inadequate for what the applicant was requesting. It did not show the maneuvering aisles or even the spaces and she didn't believe that 50 spaces would fit in following the city rules. She also saw a narrow street and a residential area. She felt it was an over-intensification of the use. Whatever was grandfathered was fine, but this was a variance for a change in use which she was not willing to support.

Mr. LeMay stated that the testimony clearly erases some of the parking spaces that they used to justify the gap between the 50 required and the 57 that they claim to have. On balance, he felt that the problem was that this was a very dense neighborhood. They were there because the use was abandoned for storage of rental vehicles and now they would like it reopened. He felt they had a reasonable use of the property without this particular additional use and he hadn't heard anything about the possible environmental considerations of vehicles stored for long periods of time on grass surfaces and so forth. There were a lot of holes in the proposal.

Mr. Jousse stated that what the applicant was trying to do, and what they were voting on, was allocate 15 spaces to another party. The applicant had never relinquished the right to store vehicles. What had happened was that the leasing of some spaces to another party expired and he was trying to reinstate it. He would not support the motion because the storage of vehicles was permitted on that piece of property.

Mr. Witham stated that the use was appropriate for this lot. He understood that the site plan could have been better drawn, but he had storage there at one time and the parking lot abutted a railroad track and was screened by the building. While he was sympathetic to neighbors' concerns, the fact of the matter was that the area was mixed residential and business. This was a huge facility with large moving vans going in and out. It was the nature of business and what happened during the normal course of the day. The proposed use was really overflow and there would not be this constant in and out of tow trucks. The owner was allowed to store cars as part of the business and he wants to lease to someone else to store cars. They were not introducing storage into a residential neighborhood and diminishing property values. They were allowed to store cars and there would be no drastic change. They will never use all the spaces.

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

~~~~~~

5) Petition of **Antoine Albathany, owner**, for property located at **999 Woodbury Avenue** wherein Variances were requested from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) to allow an existing 20' x 26' attached garage to be increased 1'± in height and a pitched roof added with a 4'± left side setback where 10' is the minimum required. Said property is shown on Assessor Plan 219 as Lot 32 and lies within the Single Residence B district.

Mr. Witham announced that he would be stepping down for this petition.

SPEAKING IN FAVOR OF THE PETITION

Mr. Harry Durgin stated that he was there with the owner, Mr. Antoine Albathany. There was structural damage to the existing garage which had multiple pitches so that water collected. There were two bedrooms above the garage. They would like to remove the existing roof, raise it 11" or 12" and then install wood trusses. The water will be pitched toward the back yard, not toward the neighbor's yard.

Mr. Kevin Jonah stated that he was the abutter to the rear. He thought what the applicant was doing was great for the neighborhood and saw no reason to deny it.

Mr. Howard Mangele stated that he had lived on Maplewood Avenue for 12 years. He said the garage was in really bad shape and he saw no problem with the proposal.

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. Parrott.

Mr. Jousse stated that he had viewed the property and there was dry rot that appeared to have been going on for an extended period of time. All those low pitched roofs going onto this nearly flat roof had caused a lot of damage inside the property. Reroofing alone would not solve the problem as there was not enough pitch on the roof. The least expensive and right way to fix the problem was to take off the roof and re-do it.

He stated that granting the variance would not be contrary to the public interest. The special condition creating a hardship was that the foundation was where it was in relationship to the property line so that this change required a variance. There was no way to correct the problem without creating a lot of expense to the applicant. The spirit of the ordinance would be served and justice done and he didn't believe that the value of surrounding properties would be affected.
~~~~~~

Mr. Parrott stated that he agreed.

Chairman LeBlanc stated that a minimal amount of relief was being requested.

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

Mr. Witham re-assumed his seat.

~~~~~~

6) Petition of **DiLorenzo Real Estate, LLC and City of Portsmouth, owners, Poco Diablo, Inc., applicant**, for property located at **33 Bow Street/ 2 Ceres Street, 37 Bow Street** and **off Ceres Street** wherein Variances from Article III, Section 10-304(A)&(B) were requested to allow an irregular shaped 1,160± sf addition 11'6"± in height consisting of an open sided pergola with protective covering and with a portion having a roof deck, additionally a 1st floor expansion beneath the deck and Lot 48 having 1%± open space where 5% is the minimum required. Said property is shown on Assessor Plan 106 as Lots 48 & 49 and lies within the Central Business A, Downtown Overlay and Historic A districts.

SPEAKING IN FAVOR OF THE PETITION

Attorney John Bosen stated that he was there with the applicant, Mr. John Golumb and the architect, Ms. Lisa DeStefano. He noted that the plan which he had just distributed was the culmination of years of hard work and had the support of the City Manager's office. They wanted to accomplish two things, open up the waterfront to the general public and relocate the restaurant's deck as shown on the plans. Ms. DeStefano would walk the Board through the design aspects.

Ms. DeStefano stated that they had submitted a number of exhibits, to which they were adding an additional sheet, which she distributed. The first exhibit showed a site plan of the area where the existing Poco's deck was highlighted and it shows the relocated deck. They had been working on this project since 2007, including a few work sessions with the Historic District Commission and the project met all current building codes, which the existing facility, due to age, did not. The drawing she brought that evening showed an enlarged diagram and indicated the face of the existing building and lots 48 and 49. When she originally put in the application for Lot 48, they had estimated a 1% open area. After further design meetings with the city and the construction team, they determined the actual open area was 2.6%. Lot 49 had 11.6% open area. They have met with the Health Department and others in the city to be sure everything was accounted for. She stated that this was the best way to move forward but they would lose a number of seats due to egress requirements and the agreement with the city as to the land transfer.

Ms. DeStefano stated that the last drawing showed what they were looking for with regard to height. The intent of the one story structure was that they didn't want a building that did not fit in the context of the area which contains a series of one story structures. In relocating this structure against the building, they were requesting relief from the 20' height requirement. She reiterated that the one story 11'6" height was proportionately of the same size, scale and
~~~~~~

openness they were looking for in this area. The greatest impact of the proposal was that it would open up the public view of the waterfront, which is part of what they city wanted to do.

Attorney Bosen stated that essentially the design was based on the circumstances of where they were located and the uniqueness of what was proposed. Property values would be enhanced by the addition of the city's waterfront park. He noted that this particular area had been used by Poco's for outdoor dining for a number of years. After this summer, the existing deck would be demolished and construction started, but the use would not change. The existing roof on the outdoor deck was 13' and the proposed was 11'6". He stated that the waterfront area had other outdoor dining establishments, all of which had rooftops less than 20'.

Attorney Bosen stated that the project would not be contrary to the public interest. One of the reasons they had worked so hard was to open up the waterfront to the public and to serve to draw people to the area. A 20' roof height would dominate and obscure the architectural integrity of this building. Their 2.6% was a little over half of what the ordinance requires for open space which was in keeping with the public interest considering their location which would be abutting a public park. He noted that one of the requirements of the Liquor Commission was for planter boxes outside to create a buffer. Under the ordinance, those were considered a structure and ate away at the open space for Lot 48. When considering the two lots together, with common ownership and common use, the open space would be 13%.

Noting that this property was one of the most unique in the city, Attorney Bosen stated that the special conditions were that, in this area, a 20' roof would dominate and interfere with the dining room on the second floor of the restaurant. With regard to open space, the deck had been pushed to the far left to retain the view. The deck would be seasonal and would be a structure without walls. It was a great use of space and an upgrade over what was currently there, which was a single parking space. He stated that this was a very expensive renovation and represented the best possible method for relocating the deck. They had studied the issue and there was no other reasonable method from their view and that of the City. Justice would be done by approving the request. The setbacks were met and, while they would be 2.4% shy of the open space, there would be a new deck which was compliant with all codes and regulations. Attorney Bosen added that integrating with existing businesses and styles of architecture, opening up the waterfront, and promoting economic vitality in the area would be in the spirit of the ordinance. The 20' height requirement was the maximum used in the business and downtown areas which made sense, but not at the waterfront.

Ms. DeStefano noted that the proposal had been presented to the Historic District Commission at a work session and, with approval that evening, they would be able to go forward for a public hearing before that body and seek final approval from the Planning Board.

Mr. Jousse referred to the submitted photograph which shows a storm water drain to the left rear of the pickup truck and asked about the drainage. Ms. DeStefano stated that they were coordinating their work with what the City was doing with the waterfront to ensure that the storm drains were adequate.

Ms. Tillman confirmed that any drainage would be redone in connection with the City's work on the project. These issues would be picked up during the site review process and, when the

deck was down, the City would be in there and working immediately. She noted that the project had the City's total support.

Mr. Grasso asked that Attorney Bosen address the letter they had received from Mr. Mark Hodgdon regarding his mother's property. Attorney Bosen stated that the drawing showed the minimum 9' right of way clearance required and he indicated on the plan where the construction would take place. There would be no impact on the 9' right of clearance required and none to the right of way Mr. Hodgdon mentioned.

In response to questions from Mr. Parrott, Attorney Bosen confirmed that there were seats on the rooftop and there was actually a guard rail, although it was somewhat hidden. When Mr. Parrott asked if he had that covered, he replied, "yes."

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 called for a decision by the Board, noting that the request had changed to 2.6% open space where 5% was required, which would be less relief than advertised.

Mr. Parrott made a motion to grant the petition as advertised and discussed that evening. The motion was seconded by Mr. Witham.

Mr. Parrott stated that the project had been pretty well vetted in discussions with the city and he did not feel it would be contrary to the public interest. The special conditions creating a hardship were the historic use of the area, the extremely tight confines and small lots, and the general layout against the river. The orientation and small size of the parcels, the peculiar access and everything about the general area were all compounded by the seasonal use of the property. He stated that there was no other reasonable method to pursue. It appeared that, over a period of time, different scenarios had been tried and they had apparently come to this well thought out design. He stated that, in the spirit of the ordinance, this would be the best use of this property, particularly against the river. In the justice test, there would be no benefit to the public in denying the variance. In fact, the benefit in public access to the water was obvious and there would be improvements to the public space after the deck was moved. Mr. Parrott concluded that the value of surrounding properties would only be enhanced by this attractive addition.

Mr. Witham agreed and added that, with regard to the 5% open space requirement, there were two lots here but they really functioned as one. If they were treated as one, the open space would be around 8% which would meet the requirement and then some. The spirit and intent of the ordinance as to open space had been met. Regarding the height requirement, he felt that values would be affected if the roof were 20' in height and the lower height was more advantageous to the riverwalk project.

Mr. Jousse added that a 20' height would be overpowering and, in looking at the artist's rendition, the project looks very light and airy and a lot better than what was there now. It was a win/win situation for everybody.

The motion to grant the petition as advertised and discussed, with the open space amended to 2.6%, was passed by a unanimous vote of 7 to 0.

III. ADJOURNMENT

It was moved, seconded and passed by unanimous voice vote to adjourn the meeting at 9:40 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary

~~~~~~

III. ADJOURNMENT

It was moved, seconded and passed by unanimous voice vote to adjourn the meeting at

Respectfully submitted,

Mary E. Koepenick, Secretary
~~~~~~