

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

**EILEEN DONDERO FOLEY COUNCIL CHAMBERS**

**7:00 p.m.**

**April 28, 2009, Reconvened  
From April 21, 2009**

**MEMBERS PRESENT:** Chairman Charles LeBlanc, Carol Eaton, Thomas Grasso, Alain Jousse, Arthur Parrott, Alternates: Derek Durbin, Robin Rousseau

**EXCUSED:** Vice Chairman David Witham, Charles LeMay

**ALSO PRESENT:** Lucy Tillman, Chief Planner

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**I. OLD BUSINESS**

A. Approval of Minutes – March 17, 2009

It was moved, seconded and passed by unanimous voice vote to accept the Minutes as presented.

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**II. PUBLIC HEARINGS**

8) Appeal from an Administrative Decision by **Robert MacDonald, owner**, for property located at **430 Islington Street** concerning the revocation of Building Permit # 8-345 for a “Complete gut of existing 2 unit building with new rear addition to create 4 dwelling units”. Said property is shown on Assessor Plan 145 as Lot 36 and lies within the Mixed Residential Business district.

Chairman LeBlanc announced that this petition had been withdrawn by the appellant.

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9) Petition of **Jay Edwards, owner, and Mark Montville, applicant** for property located at **3612 Lafayette Road** wherein a Variance was requested from Article II, Section 10-208 to allow the outdoor display and sales of play systems for children in a district where outdoor display and sales are not allowed. Said property is shown on Assessor Plan 297 as Lot 3 and lies within the General Business and Industrial districts.

**SPEAKING IN FAVOR OF THE PETITION**

Mr. Mark Montville stated that he had been the owner of Granite Play Systems for 7 years. He outlined the background of the company and distributed brochures showing his product, which he characterized as very high quality. They were well established in the area and just need a larger location to service customers. He had been informed when investigating the location that all permits were in place, but found that was not the case and even having to come before the Board put a hardship on the business. Referring to the drawings he submitted, he stated they were looking for an opportunity to display models without negatively impacting their neighbors or the environment.

Ms. Rousseau stated she was thinking about children and how they jump around and noted that there were no measurements indicating how far back the equipment would be. Mr. Montville stated there would be a minimum of 50'. There would be a barrier in place, 2' high with lights in front and then approximately another 25' to 30' back from that. If necessary, they would install a split rail fence to keep the children back, although this was never an issue in their old location and no child was ever hurt. They have thick rubber mats for safety.

Chairman LeBlanc asked how far away they would be from the left side property line and Mr. Montville stated about 40'. Chairman LeBlanc asked if the operation would essentially be the same as they had at Boston Lawnmower and Mr. Montville stated it would be. In response to a question from Mr. Jousse, he stated this location would be in lieu of the previous one. He described their need for a greater number of displays and greater range in unit prices.

Mr. Grasso recalled that a special exception had been granted about a year ago for the repair of school buses on the property and asked if that operation still existed. Mr. Montville replied that he didn't believe there were any other tenants and no one else with a permit other than the one he was requesting. Ms. Tillman stated it was her understanding that they had moved out and the building was being cleaned up and repainted for this new tenant. She noted that the Board had granted a variance for an operation similar to this at the former Boston Lawnmower site.

Ms. Rousseau asked Ms. Tillman if there were any stipulations to that variance, such as so many feet back or a barrier. Ms. Tillman stated she didn't recall any. There followed a brief discussion among Ms. Tillman, Chairman LeBlanc, Mr. Jousse and Ms. Rousseau about the location of the display area at Boston Lawnmower during which Ms. Tillman restated that there were no fences or other special requirements. Mr. Montville confirmed there was no fencing.

In response to further questions from Chairman LeBlanc, he stated that they would not receive raw materials at this location, but only display the units. The sold systems would be manufactured in South Dakota and installed at the home site. No units would be stored in the building, but the sales would be inside. They already had permits in place for inside the building.

**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. Eaton made a motion to grant the petition as presented and advertised, which was seconded by Mr. Grasso. They agreed to Chairman LeBlanc’s proposal to add a stipulation that the display area be 50’ from the road and 40’ from the side property line.

Ms. Eaton stated that she remembered the business in its previous location as attractive. This was an appropriate use of the site as the units need to be out and displayed and there were few other options. Public safety would be controlled by the owner and the stipulations would maintain a sufficient separation from the adjacent property and the road. There was no reason this would be detrimental to the public interest. She didn’t believe that prohibiting an outdoor display of this type was the intent of the Zoning Ordinance. Justice would be served by allowing a reasonable use of the property. In keeping with what was in the area, the use would not result in a diminution in surrounding property values.

Mr. Grasso stated that this could be considered a success story and now the business needed more space to grow. The current lot would allow more display units and accommodate that growth.

The motion to grant the petition as presented and advertised, with the stipulation that the display area be located at least 50’ from the front property line and at least 40’ from the left side property line, was passed by a unanimous vote of 7 to 0.

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10) Administrative Appeal of the decision of the Code Official by **John C. Russo, abutter**, concerning property **owned by Jonathan Sobel located at 49 Sheafe Street (a/k/a Custom House Lane)**, that Building Permit # 8-247 has a “large over-hang” which juts over an easement area owned by the abutter restricting free passage. Said property is shown on Assessor Plan 107 as Lot 21 and lies within the Central Business B and Historic A districts.

Chairman LeBlanc advised that this appeal had been withdrawn.

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11) Petition of **Lafayette Limited Partnership, owner, Paul Salacain, applicant**, for property located at **775 Lafayette Road** wherein Variances from Article IX, Sections 10-906(1)(a) and 10-906(2)(b) were requested to allow: a) 17 sf of signage on an existing 342.4 sf freestanding entrance sign where 150 sf is the maximum allowed, and b) 72 sf of attached signage where 43 sf is the maximum allowed. Said property is shown on Assessor Plan 245 as Lot 1 and lies within the General Business district.

**SPEAKING IN FAVOR OF THE PETITION**

Mr. Paul Salacain outlined the background on his proposal to create a Trek bicycle store in the former piano shop in the plaza. The shop was intended to be a concept store for the manufacturer, Trek, and would sell 85% Trek products, including a full range of bikes, accessories and clothing. They wanted the shop to be a place for cyclists to congregate with year round possibilities within the shop such as a fitness spin room. He stated that they would like the shop appropriately represented, starting with the pylon sign. Of the two pylon signs, they would like to put theirs on the same pylon as Margarita's, as shown in his packet. The individual signs would be rearranged and this sign would be 17 s.f., the same size as three of the other signs.

Mr. Salacain stated that the second part of their variance request was for 72 s.f. of attached signage. He indicated two signs from Trek, one of 50 s.f. with white lettering and a black sign with letters which was 63 s.f. They were allowed 43 s.f. which was the size of the temporary banner they have in place.

In response to questions from Ms. Rousseau and Chairman LeBlanc, Mr. Salacain stated that he had included a table in the exhibits showing all of the existing signage. He noted that not all stores had free standing signs. It was complicated because there were two pylons and several variances over the years to add signage. Their sign would be in the middle of the pylon, which would be neatened up with all signs evenly spaced.

In response to a question from Mr. Grasso, Mr. Salacain stated he was not asking the Board to choose between the two signs, but he was faced with a decision and was leaning toward the 63 s.f. sign so the variance request included that amount. Ms. Eaton asked the size of the sign with the black border and Mr. Salacain stated it was 50 s.f. squared off. Measuring just the outline, it would be less. When she asked if the lettering on the two signs was the same size, he indicated the black bordered was smaller.

#### **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 stated that he would like to take the decision in two parts and made a motion to grant part a) of the petition, the 17 s.f. of signage on the existing freestanding entrance sign. The motion was seconded for discussion by Mr. Jousse.

Mr. Parrott stated that the request was for signage comparable to what several of the other stores and it would fit in with respect to the size, scale and location. He stated that it would be in the public interest to drive down and be able to quickly determine what was in the plaza. The hardship was that a common size sign was pretty well established on an established plaza, and this was comparable so literal enforcement would not serve any purpose. This would be an appropriate size for traffic. He stated that it would be in the spirit

of the ordinance to allow businesses to catch people’s eye as they drive by. The buildings were set back and up from street level so the signs were needed and appropriate. He could see no balance in the justice test affecting the public interest if the variance were approved and replacing one retail use with another would generate no negative effects on the value of surrounding properties.

Mr. Jousse stated he had nothing to add.

The motion to grant part a) of the petition, 17 s.f. of signage on an existing freestanding entrance sign, was passed by a unanimous vote of 7 to 0.

Mr. Parrott then made a motion to grant part b) of the petition with the stipulation that the attached signage be no larger than 50 s.f. Mr. Grasso seconded the motion.

Mr. Parrott, noted that the Trek Company had two standard signs, one of which was 50 s.f. This was a reasonable limit and fairly close to the city standard. He stated that the public interest followed the same reasoning as his first motion, that it was in the public interest to identify the store and products from a reasonable distance. Regarding special conditions, it would cost a lot more to have a sign made up rather than choosing one available through Trek and it was reasonable to approve one so close to the ordinance requirement. Insisting on 43 s.f. might result in unnecessary hardship. A variance was needed to allow the use of the property as a sign was necessary for every store. He stated that it would be in the spirit of the ordinance to encourage businesses in Portsmouth and allow them to make themselves known. In the justice test, there was no public interest which would argue against granting the variance and the benefit here tilted to the owner.

He felt that the value of surrounding properties would not be diminished by a well recognized brand name store going into the same location or a previous store.

Mr. Grasso noted that a 50 s.f. sign would be only 7 s.f. above what was allowed and seemed to be in line with others in the plaza as to placement and size.

The motion to grant part b) of the petition with the stipulation that the attached signage by no larger than 50 s.f. was passed by a vote of 6 to 1, with Chairman LeBlanc voting against the motion.

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**III. ADJOURNMENT**

It was moved, seconded and passed by unanimous voice vote to adjourn the meeting at 8:10 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary