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 28, 2009, Reconvened From July 21, 2009**

MEMBERS PRESENT: Chairman Charles LeBlanc, Vice Chairman David Witham Carol Eaton, Thomas Grasso, Alain Jousse, Arthur Parrott, Alternate: Robin Rousseau

EXCUSED: Charles LeMay, Alternate: Derek Durbin

ALSO PRESENT: Lee Jay Feldman, Principal Planner

Prior to the public hearings, Chairman LeBlanc introduced the new Planning Director, Mr. Rick Taintor.

Mr. Taintor noted that, prior to his appointment, he had been working with the City for over three years on revising the Zoning Ordinance, which had proven to be more complicated than expected. They will be finishing the Planning Board public hearings and would be making a recommendation to the City Council by October. This was a good time to have a discussion with the Board and he proposed a two hour session covering a broad range of zoning issues as well as possible changes to the zoning map. They would like to identify areas where modifying dimensional regulations could reduce the need for variances.

Mr. Witham asked when the final draft would be prepared. Mr. Taintor stated that September 10 would be the last public hearing with the Planning Board. There an on-line form for public comments, which would be assembled followed by the final Planning Board meetings and presentation to the City Council on October 13, 2009.

I. PUBLIC HEARINGS

9) Petition of J.P. Nadeau, owner, and Witch Cove Marina Development, LLC, applicant, for property located at 187 Wentworth House Road wherein the following were requested: a Variance from Article II, Section 10-208, Table 4, to allow 5 single-family dwellings in the Waterfront Business District where residential uses are not allowed (use variance); a Variance from Article III, Section 10-301(7)(a) to allow construction of a yacht club structure and 2 single-family dwellings within the 100' inter-tidal zone adjacent to Sagamore Creek; a Variance from Article III, Section 10-304(A), Table 10, to allow a structure with a front yard of 14 feet where the front yard requirement is 30 feet; a Variance from Article III, Section 10-304(A),

Table 10, to allow a structure with a left side yard of 12 feet where the side yard requirement is 30 feet; a Variance from Article III, Section 10-304(A), Table 10, to allow a structure with a right side yard of 24 feet where the side yard requirement is 30 feet; a Special Exception under Article XII, Section 10-1201(A)(1)(b) to allow parking on another lot in the same ownership, provided all spaces lie within 300 feet of the lot in question; and a Variance from Article XII, Section 10-1201(A)(1)(b) to allow 10 required off-street parking spaces to be located more than 300' from the use that they serve. Said property is shown on Assessor Plan 201 as Lots 12, 17 and 18 and lies within the Waterfront Business district.

Chairman LeBlanc advised that the applicants had requested that the petition be postponed to the following month. Mr. Grasso made a motion to postpone the petition to the August meeting, which was seconded by Mr. Witham and approved by unanimous voice vote.

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10) Petition of Maria Elena Koopman, owner, and James Peterson, applicant, for property located at 335 Maplewood Avenue wherein a Variance from Article XII, Section 10-1204 Table 15 was requested to allow for an office use to provide 8 parking spaces where 12 are required. Said property is shown on Assessor Plan 141 as Lot 26 and lies within the Mixed Residential Office district.

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernard W. Pelech stated that he was there was there with Mr. James Parkinson, representing the applicant who wished to move his engineering business to the site of the former Inn at Christian Shores at 335 Maplewood Avenue. He submitted a copy of the tax map and photographs of the property at the intersection of Dennett Street. He stated that there were currently 8 parking spaces on the site and the vehicles back out onto Northwest Street. If the site were used for offices, it would require more parking but because of the changes in grade, the 4 additional parking spaces required could not be created.

Attorney Pelech stated that 8 parking spaces would be more than adequate as several employees walk or bike to work and the majority of meetings with clients are off premises. Deliveries might be once a week. Regarding the public interest, he stated that there would be no additional demand for municipal services and less traffic than with the bed and breakfast. The hardship in the property was the terrain which made creating the additional spaces not reasonably feasible. He stated that the intent of the parking requirements in the ordinance was to prevent overcrowding and parking on the street. With a number of employees walking to work, the proposed spots would be adequate and not contrary to the spirit of the ordinance. He noted that the proposed new zoning ordinance would reduce the requirement from 12 to 10 parking spaces.

He stated that there would be no benefit to the public in denying the variance while the hardship to the applicant would be substantial. There would be no diminution in the value of surrounding properties. There would no longer be cooking odors and the characteristics of the neighborhood would not be changed.

In response to questions from Mr. Witham, Mr. Parkinson stated that there were 8 rooms at the bed and breakfast. He did not know if the owner had lived there.

Mr. Jousse asked if the entire building would be used by their firm and Mr. Parkinson stated it would. Attorney Pelech noted that there had been discussion about an apartment, but this would remain commercial. Chairman LeBlanc stated that the Board had to deal with the life span of the property, not the particular business, and in five years the property could be sold, with an office with 8 parking spaces. Attorney Pelech suggested that the Board, in that situation, place a condition on the variance that there be no more than 5 or 6 employees and, if there were more, then obviously relief would be required from this Board in the future.

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

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

Mr. Parrott made a motion to grant the petition as presented and advertised with two stipulations. His first stipulation would be that the entirety of the building be retained and used exclusively for business purposes as proposed and, secondly, that the number of employees working in the building would be a maximum of 6. The motion with stipulations was seconded by Mr. Grasso.

Mr. Parrott stated that this was a congested little area with a mix of residential and business uses as indicated by the zoning. On a busy street such as Maplewood Avenue, it would be a difficult proposal, but in this case it was on a very lightly used street, namely Northwest and for that reason, he could support the application.

Mr. Parrott stated, with respect to the criteria, that he thought there really wasn't much public interest which would be affected due to the nature of the street and the low usage. The special conditions creating a hardship were the topography of the lot and the placement of the house. Without doing something incredibly expensive, it was not feasible to create the formal kind of spaces that would not require backing out onto the street,. Regarding the variance being needed to enable the proposed use given the special conditions of the property, he would include the mixed nature of the neighborhood, the fact that Northwest Street was a low traffic volume street, the limited size of the company that was going in there, particularly if this passed with the stipulation, and the difficulty he had mentioned in creating a solution to the spaces. These same factors applied to the question of some other reasonably feasible method. He felt that the spirit of the ordinance was to allow the highest level use possible for the property and this would be a good use for that particular building. In the justice balancing test, he could see no overwhelming public interest that would argue against granting a variance. As to the value of surrounding properties, the site had been operating apparently successfully as a bed and breakfast. This use, if anything, would be less intense and have less effect on the neighborhood.

Mr. Grasso stated that, in the Boccia analysis, they look at other reasonably feasible methods which was a key phrase for this proposal. Although there was land to use, given the topography and the two tiered nature of the lot, it was impossible to provide the required 12 spots.

Chairman LeBlanc stated that the Christian Shores organization tended to be very vociferous if anything happened in their neighborhood and there was no one there that evening which he found telling as to the impact that this change would have on the neighborhood.

The motion to grant the petition as presented and advertised, with the stipulations that the entirety of the building would be used for business and that the maximum number of employees would be six, was passed by a unanimous vote of 6 to 0.

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11) Petition of **Dinnerhorn Realty Inc., owners**, for property located at **980 Lafayette Road** wherein a Variance from Article IX, Section 10-908 Table 14 is requested to allow a new freestanding sign 25' high replacing an existing freestanding sign 25' high where a maximum height allowed is 20' and to allow said sign be located 5'3" from the front lot line (where the the current sign is located) where a 20' setback is required. Said property is shown on Assessor Plan 253 as Lot 14 and lies within the General Business district.

SPEAKING IN FAVOR OF THE PETITION

Attorney Charles Griffin stated that the owners were requesting to replace the existing sign with a new one of the same height, but set back 5'3". He distributed some additional material and noted that when the sign was installed a business sign could have a maximum of 30'.

Addressing the criteria, Attorney Griffin stated that it would be in the public interest and safety to improve the sign, which served both restaurants on the site. It would be in the spirit of the ordinance to reduce the amount of signage by eliminating the message board. Removing the Dinnerhorn logo would bring it into even greater conformance with the ordinance. He stated that special conditions existed. When Route 1 was constructed the road was elevated 4'. As a result, the ground level, from which the signs were measured, was 4' below the surface of the roadway. A lot of the sign was below the roadway so that another 5' were needed above the maximum allowed. The presence of the guardrail also impeded the visibility of the restaurant and there were other signs and poles, so that a clearly visible sign was needed. The height would also allow drivers to see the sharp right turn prior to entering. With regard to the setback, he stated that moving the sign back would put it in the middle of the parking lot. Attorney Griffin stated that substantial justice would be done by granting the variance because they were asking to slightly alter a situation that had existed for 27 years. He added that the value of surrounding properties would, if anything, improve.

Chairman LeBlanc asked the height of the current sign and Attorney Griffin stated it was 25'

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 one of his two main points in terms of supporting this application was the fact that they were removing the letterboard, which was usually a source of visual clutter and distraction for drivers. It resulted in a much clearer sign and a safer situation. The square footage of signage was going down from 168 s.f. to 124 s.f., which was an improvement. Looking at the height of sign, the way the ordinance was written, he imagined that 99 out of 100 times the level of where the sign was measured was the level of the roadway. The height was based on the visual impact from the roadway and, with the 4' sunken base, he viewed it as a sign being 21' up from the travelway, or 1' above what the zoning requires.

Specifically addressing the criteria, Mr. Witham stated that the sign was there to inform the public of the business location and they were actually removing the letterboard so he thought it was a better situation with regard to the public interest. He had touched on one of the special conditions of the property resulting in a hardship which was the base of the sign being 4' below the roadway. Also, with the current configuration of the parking lot, it would be very difficult to locate the sign on the property. Regarding any other reasonably feasible method, if the sign were lowered 5', it really got to be too low to be seen from the roadway and wouldn't function well in terms of identifying the business. The sign had a history of being there and he had no reason to believe the location had any adverse effect on traffic and safety.

Considering the 5'3" setback, Mr. Witham stated that moving the sign back would place it either in the middle of the travelway or right smack in front of the building. To the south, the Mainely Flag Sign would probably block it considerably if it were moved back. He stated that it was in the spirit of the ordinance to allow a business to identify itself and operate in a profitable manner without having any adverse effect on the public or traffic and safety. There was no reason to believe that granting the variance would be outweighed by any benefit to the public interest or that the value of surrounding properties would be diminished.

Ms. Eaton added that, while making a needed replacement of the existing sign, the owners were making an effort to come into better compliance with the ordinance by reducing the signage there. She saw no negative impact with the change and felt it would probably improve the site.

Mr. Jousse agreed that replacing the sign would make it more in compliance. He also felt that moving the sign further from the road would create a financial hardship and hinder the flow of traffic on the site.

The motion to grant the petition as presented and advertised was passed by a vote of 5 to1, with Chairman LeBlanc voting against the motion.

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12) Petition of **Seth F. Peters, owner, Andrew Schachat, applicant**, for property located at **112 State Street** wherein a Variance from Article II, Section 10-208(21)(a) was requested to allow outdoor entertainment on a lot located within 200' of a Residential or Mixed Residential district. Said property is shown on Assessor Plan 107 as Lot 54 and lies within the Central Business B district.

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

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13) Petition of **Joseph Gobbi Supply Corp, owners and Superior Towing, applicant**, for property located at **685 Islington Street** wherein a Variance from Article II, Section 10-208 is requested to allow for the storage of towed motor vehicles for a period of up to 30 days. Said property is shown on Assessor Plan 164 as Lot 12 and lies within the General Business district.

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernard W. Pelech stated that the petitioners had received a variance in November, 2008, following a site walk, to allow an auto towing company office and the storage of towed vehicles for less than two weeks on this site which was currently a gas station and repair location. In 2009, a variance to move the storage space to a different location was denied. The reason for their request was that the applicant previously thought he was complying with the city police towing list, but had learned that he could not be on the list as the vehicles needed to be stored for up to 30 days. To ensure their eligibility, they have to either amend the previous variance or apply for a new one, which was what was before the Board that evening.

Attorney Pelech stated that currently there were only one or two companies on the Police Department towing list and it would be in the public interest to have a towing compound in close proximity to the downtown area. There were special conditions resulting in a hardship. The lot was small and, with the setbacks, there was no usable buildable area on the property. He stated that there was no fair and substantial relationship between the general purposes of the Zoning Ordinance and the restriction on the property. He noted that the ordinance restricted outdoor storage of motor vehicles in excess of two weeks, yet the city required at least 20 days of storage.

Attorney Pelech continued that allowing vehicles to remain for up to 30 days would not injure the public or private rights of others. Regarding the spirit of the ordinance, he stated that the site had been used for auto repair for a long time and the towing lot had worked well with no overcrowding. The neighborhood was a commercial area in a business zone with a mix of uses and this operation would not change its characteristics. Extending the storage period up to 30 days would not injure the general public, while denying the variance would create a hardship for the applicant as they would not be accepted on the Police Department list. He stated that the value of surrounding properties would not be diminished and adequate screening had been put in to make the vehicles less visible.

Mr. Parrott asked what other lots the applicant had and Attorney Pelech stated there were none although they used to be behind the button factory. In response to further questions from Mr. Parrott, Mr. Kevin Gilman stated that the significance of the 30 days was that abandoned vehicles have up to that time during which period the vehicle needs to be maintained within the city. After the 30 days, under state law, they can dispose of the vehicle. He confirmed that the vehicle would then be removed from the lot. Mr. Parrott stated that he lived near Banfield Road and would not like to see this lot turned into that. Mr. Gilman stated that only 25% to 30% of the vehicles would linger for the 30 days and then they would move it along as they want to keep the cars moving.

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

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

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

Mr. Parrott stated that this particular change was of a different nature from the previous proposal which he had opposed. This was not to allow the function in the location but simply changing the method of operation from a maximum of two weeks to a maximum of 30 days. One of his concerns was the city having to try to follow up and make sure that the 30 day requirement was adhered to. They heard that evening, however, a good business reason to keep the cars moving so he thought it would be self policing in that regard. In terms of the actual operation of the lot, he didn't feel it made a bit of difference whether they were changing cars every day or some were staying there for 30 days, as long as it didn't turn into a mini junk yard. Even though he still didn't like the operation there, this change made good business sense.

Addressing the criteria, Mr. Parrott stated that there was no change in the public interest since their previous approval and, if there had been any problems reported, he hadn't heard about them. There was no practical difference between storing a vehicle there for two weeks or for 30 days so it could be said that it was an unnecessary hardship to require them to have a maximum of 14 days, particularly as it put a crimp in their ability to get business through the Police Department. Regarding the zoning interfering with a reasonable use of the property, it would again be that the 14 versus 30 days was not a concern and insistence on the 14 days would interfere with the operation of the business.

Mr. Parrott continued that there was no fair and substantial relationship between the purposes of the ordinance and the restriction on the property. The ordinance didn't exist to restrict the reasonable operation of a business and he didn't feel that the general purposes of the zoning ordinance would be challenged by this change. The public and private rights of others had been addressed previously and he didn't think this would result in a change. He stated that the spirit of the ordinance was certainly to support local business whenever it could do so, less any adverse effect on neighbors and in this case, he didn't feel there was any. In the justice test, there was no public interest that would outweigh the relief that the applicant was asking for in this particular case, which was only a question of a time period. There would be no more effect on the value of surrounding properties if a car sat there for two weeks or 30 days.

Chairman LeBlanc noted that the Planning Department had requested a couple of stipulations if this were to be granted, one that an impervious fence be placed to enclose the vehicle storage area, and two, that there be a vegetative buffer along Bartlett Street up to the access gate. He asked if Mr. Parrott would be amenable to the stipulations.
Mr. Parrott asked where the fence would be located. It was not the stockade fence shown at the back on the plan. Chairman LeBlanc stated it was not. It would be from the bridge up the point where the gate swung open. Mr. Parrott stated that he felt the stipulations were reasonable and

might discourage people from parking vehicles up there such as the tow vehicle, which both he and Chairman LeBlanc agreed had happened.

Chairman LeBlanc asked Mr. Witham if the stipulations were acceptable to him and he stated he agreed with them. He thought that the impervious fence was already done. Chairman LeBlanc stated it was but a stipulation was needed to be to ensure that it stayed.

Mr. Witham stated that he was amenable to the stipulations as he thought that he had made that stipulation in November and had questioned the department but Lucy didn't recall it. He did have concerns with the tow truck parking there because it seemed to overlap onto the sidewalk and this was a way of preventing that situation. He felt that a landscape buffer was in some ways kind of stepping back to maybe what they should have done in November. It seemed like a difficult place to have a landscape buffer with the flooding they get. He also felt they were putting the screws to them a little bit with that but he did understand the reasoning and the long view. While they've talked about long term planning and improvements to the Islington corridor, he didn't have an issue with a little grittiness in the city.

When Chairman LeBlanc asked if he was then in favor of or opposed to adding the stipulations, Mr. Witham stated he would be in favor in order to grant the variance.

Speaking to his second, Mr. Witham stated that whether there were 10 cars turning over during the 14 days that had been approved or staying there longer, there were always 10 cars there and having them longer had no net impact to the general public. Actually the cars staying longer might result in less movement, which would be more of a benefit than having tow traffic going in and out of Bartlett. There was also the fact that, while the zoning ordinance didn't allow 30 days the Police Department in the city required 30 days, so the variance would be filling a void that the ordinance may not have accounted for. While there might be other areas in the city where you can keep towed cars for 30 days, he thought it was in the city's benefit to have a location within walking distance from the downtown where probably the majority of the towing took place. He reiterated that he was supportive of the fence, which he felt got missed in November and was open to hearing any comments from the other Board members with regard to the landscape buffer, which he supported not for the fact that it beautified the area but that it kept vehicles off the sidewalk.

The motion to grant the petition as presented and advertised with the stipulations, that (1) an impervious fence be located on the property to enclose the area in which the vehicles would be stored, and 2) that a landscape buffer be installed in front of the fencing along Bartlett Street to the point of the access gate, was passed by a unanimous vote of 6 to 0.

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14) Petition of **C and B Portsmouth, LLC, owner**, for property located at **1840 Woodbury Avenue** wherein a Variance from Article IX, Section 10-908 Table 14 was requested to allow 143.65 square feet of aggregate signage where 92.63 square feet is the maximum 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

Mr. Kenneth Gruskin stated that he was the architect for the project, there with Attorney Pelech, and was seeking a small amount of additional signage.

Attorney Bernie Pelech noted that in July of 2003, the Board had approved the addition to the former Kentucky Fried Chicken building for construction of the Verizon operation. He stated that this was a difficult site, with very little buildable area. They had come before the Conservation Commission and Planning Board and, in building what was allowed, had a structure with 300' of building frontage. This was critical because the amount of signage was determined by that dimension. They want to eliminate 37.6 s.f. off the pylon and add 39 s.f. to the side of the building along with some additional signage on the doors and inside the windows. This would result in 143 s.f. of aggregate signage where 92 s.f. was allowed.

Attorney Pelech stated that it was in the public interest that the location be readily identified. This was a well developed corridor and, given the traffic congestion, insufficient signage could create a hazard. He noted that the Mattress Giant facility was located close to the road and blocked the view of the building. Because of the special conditions of the property and the proximity to wetlands, to comply with today's ordinance created a small buildable area which related to the amount of signage which was allowed. The applicant was willing to remove some signage in order to put signage on the building and inside the building. He stated that granting the variance would not be contrary to the spirit or intent of the ordinance. There was nothing hazardous or unsafe. It was a regional store on an attractive site. People would not be visiting repeatedly and many would come from out of town, so identifying the location was important. In the justice balancing test, Attorney Pelech stated that a hardship would be imposed on the applicant if the variance were denied while no public interest would be served. With Gosling Meadows the closest residential area, the value of surrounding properties would not be affected.

Mr. Gruskin pointed out that this was a regional company store, not an agent store and would be one of six in the area serving the company at locations which he indicated on the exhibited map. They would provide customer service and technical support. They expect only 10-15% of their business to be local, with most coming from out of the area, mainly from the southbound direction. He indicated on the site plan where the outdoor sign would be located and distributed some photographs of the actual signage and that proposed. He showed on the site plan where the outdoor sign would be located and noted that customers were actually passing the site and turning into the exit.

Chairman LeBlanc asked about the trees in front of the building and whether they would stay below the signage. Attorney Pelech stated that he and Lucy Tillman had reviewed the landscaping plan and they went with this type of tree at her urging as it was amenable to being pruned. It would fill out, but not overwhelm the building. They would stay below the height of the signage. Mr. Witham asked about the type of tree and Attorney Pelech said he would check the plan.

Chairman LeBlanc stated they should continue and Mr. Gruskin referred to the provided photographs showing the existing signage. He described the proposed signs and what would be removed from the pylon. The new prototype design for Verizon Wireless was open windows allowing customers to see into the store and view the interior signs which would change monthly

in line with the current media campaign. They had compared the signage at the T-Mobile site at approximately 194 s.f., while the allowed amount would only be 86.5 s.f. based on their frontage.

There was a brief discussion between Chairman LeBlanc and Mr. Gruskin about how the window advertising fit into identifying the site. Chairman LeBlanc asked what the signage was on the pylon sign without the ledgerboard and Mr. Gruskin stated it was 48 s.f. He referred the Board to sheet A-2 on which there was a schedule containing many of the numbers they might need. Chairman LeBlanc asked if it listed the type of tree that Mr. Witham had questioned. Attorney Pelech stated it was some type of pin oak, specifically one amenable to pruning. Mr. Jousse directed a question to the Planning Department about whether the directional signs on sheet D-1 required a building permit. Mr. Feldman stated exit and entrance signs such as those were permitted. When Mr. Jousse asked the same question with respect to D-2-A, the white square on the pylon, Mr. Feldman stated he understood that was being eliminated. If they wanted to fill it in, it would require a permit.

Another brief discussion followed between Mr. Parrott and Mr. Gruskin about the height and visibility of the pylon sign, with Mr. Parrott asserting that the pylon sign would be more visible than a building sign and noting that it was 6' over the ordinance now. Mr. Gruskin stated that you could not see the pylon sign until you were on top of it because of the vegetation and Mattress Giant. Without those obstructions, the pylon sign would be more effective.

Mr. Jousse asked what the square footage was currently and Mr. Gruskin stated it was 82.6 s.f.

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 three graphics on the doors, the 1 interior light box, and the 1 acrylic graphics holder. When Chairman LeBlanc asked how much that was in square footage, Mr. Witham stated he did not have the numbers, but it was as presented and advertised.

Attorney Pelech interjected that it was almost 17.1 s.f. and there was a brief discussion among Mr. Witham, Chairman LeBlanc and Mr. Grasso about the square footage which would be granted. Mr. Witham stated that he was not granting the exterior wall sign on the side and Mr. Grasso stated that the total signage granted would then be 104.39 s.f.

Mr. Grasso seconded the motion.

Mr. Witham stated that he would like to briefly outline the reasons he had chosen the signs. He liked to see graphics on exterior doors, especially in designs with large glass walls where the door was not easily discernible. The graphics on the doors identified where to get in and out. With respect to the interior light box and the acrylic graphic holder, by granting these, they can control the size and not have the businesses run amok with window posters and whatnot. He felt they were minimal in nature and not visible from the streetscape. They would not result in visual

pollution. This was much different from a downtown situation where the graphics were right in your face.

With respect to the proposed attached right side sign, he felt that there were some special conditions, but what they needed to achieve could be done by another feasible method. By lowering the pylon sign somewhat, they would be able to grab traffic going both ways without having to construct another sign. He discussed in some detail the other concern he had which he would like to see incorporated in the new zoning changes, which was that developers' plans make their projects look like parks, but what showed as grass was actually mulched. While trees were planted, they were literally pruned to death. He listed several notable examples of this process. In the end it was a disservice to the community because the landscaping plan was a part of the presentation. He felt the amount of signage on this lot was enough. While the applicants showed some examples of the signage for other businesses which maybe were not conforming to the current ordinance, it did not convince him to allow it on this site. He felt the building was identifiable and, while the entrance and exit signs might need to be switched, that was not before them. He was comfortable with the door and window signs, but not the side wall sign.

Mr. Grasso stated that he agreed and felt the motion was a good compromise.

Mr. Jousse stated he would not support the motion. He also had driven by the site and coming toward town, the building was not visible until you were almost on top of it and the first thing he saw was the façade, not the side of the building. If everybody slowed down to look for the side sign, they were going to get rear-ended. He noted that one of the exhibits which showed the Verizon sign as clearly visible was a computer rendition from the middle of the suicide lane, not where normal traffic would be and he found that an insult to his intelligence. What the city ordinance allowed was quite adequate.

When Chairman LeBlanc called for a vote to allow 104.39 s.f. of aggregate signage, Mr. Witham stated his motion was not to approve the square footage. While he was, in actuality, it was for those specific signs. He didn't want the square footage approved and then have the applicants apply it to the side wall.

Chairman LeBlanc stated that, essentially, what he wanted to approve were the signs as listed in the overview from the department. Mr. Witham stated that was correct except for the top item. Chairman LeBlanc stated they have to be specific, so it would be the three graphics on the exterior doors, one interior light box window solution wall fixture and one acrylic graphic holder on the window solution wall fixture. Mr. Witham stated, "correct." Chairman LeBlanc stated that should come out to 104.39 s.f..

The motion to grant the petition, with the stated stipulations and specifically excluding the right side wall sign, was passed by a vote of 4 to 2, with Messrs. Jousse and LeBlanc voting against the motion. The stipulations were (1) that the aggregate signage would be reduced to 104.39 s.f., and (2) that the approved new signage included in the aggregate would consist of three graphics on the exterior doors, one interior light box window solution wall fixture and one acrylic graphic holder on the window solution wall fixture. In voting, Mr. Parrott stated that his positive vote was provided there was no signage on the side wall of the building and Chairman LeBlanc stated that had been expunged.

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15) Petition of **Unitarian Universalist Church, owner**, for property located at **206 Court Street** wherein Variances from Article III, Section 10-303(A) and Article IV, Section 10-402(B) were requested to allow a shed to be placed 5'± from the right side lot line where a 10' setback is required. Said property is shown on Assessor Plan 116 as Lot 34 and lies within the Mixed Residential Office district.

SPEAKING TO THE PETITION

Ms. Martha Petersen stated that she was representing the applicant in their first appearance before the Board and passed out some additional material. In the process of renovating the basement of the church, they would be renovating the interior of Karnan House for administrative offices for the minister of religious education, choir director, and others. She had been engaged to do the landscape design for both buildings and currently the back of the south yard was an eyesore and a security issue. They propose to regrade and add some loose stone and shrubs as well as a fence on the west property line and a shed, now called a hutch. Their petition was due to a hardship resulting from so little space for a small safe structure to store snow shovels and similar tools. Her request now was not for a 5' x 7' shed but something more like an exterior hutch or storage closet which they would be placed in the setback as it would need to be attached to a wall or fence. The back fence did not belong to the church; the fence on the west would be new and the two together would be like one structure. The reason for placing it in that small corner right up against the building and fence was primarily for security and to relieve the congestion in the yard space to allow for a table for staff and some greenery. Right now, the spot just collects debris and junk. The material for the hutch was weathered cedar which would not need interior or exterior maintenance. They had requested a structure that would be 7'10" tall that would be placed against a 6' fence but if there was an objection to that, the roof line could be reversed so that it met the fence on the back side of the hutch.

Mr. Grasso stated that the plan showed 5' x 7' shed and on the plan she submitted, it looked almost 8'. Ms. Petersen stated that it was 4' x 8'. He asked whether, with the shed reversed, the water runoff would tip onto someone else's property. Ms. Petersen stated they had some downspouts on the building now and the plan would be for those to take water at both sides of the perimeter into the back yard. It really didn't matter to her client whether it was reversed or not. She had mentioned the shed reversal as she thought they might have an objection to a structure taller than the fence.

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 with the stipulation that there would be no water runoff from the roof of the shed onto adjacent properties. Ms. Eaton seconded the motion.

Mr. Grasso stated that an argument could be made that these changes would actually help the immediate area and the public interest. The pictures presented showed an area of the property that was in less than tolerable condition. The special conditions creating a hardship were that it would be difficult to put in a shed at the 10' setback given the dimensions of the property and the existing buildings. There was no other reasonably feasible method which would allow them to store outdoor equipment and shovels and it would be in the spirit of the ordinance to allow them to clean up this little piece of land. Mr. Grasso stated that, in the justice test, there was no benefit to the public in denying the variance. He didn't think the shed would be a detriment to anyone and the value of surrounding properties would not be diminished.

Ms. Eaton stated that, with the congested nature of the site, it was a reasonable option to move this closer to the property line.

The motion to grant the petition as presented and advertised, with the stipulation that there be no water runoff from the roof of the shed onto adjacent properties, was passed by a unanimous vote of 6-0.

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16) Petition of **Bellwood Associates, L.P., owners, Festival Fun Park, LLC d/b/a Water Country applicant,** for property located at **2300 Lafayette Road** wherein a Special Exception under Article II, Section 10-208(54)(b) was requested to allow temporary Structures to be placed on the property for a term of up to 90 days; and a Variance from Article IV, Section 10-401(A)(1)(c) is requested to allow a nonconforming use of land to be extended into any part of the remainder of a lot of land. Said property is shown on Assessor Plan 273 as Lot 5 and lies within the General Business district.

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernard W. Pelech stated that the applicant simply wanted to temporarily locate three amusement games on the property. These would be located in trailers, each containing one game. The games would consist of skeeball, a hoop game and a water gun filling up a balloon. A special exception was needed to allow placement of these structures for up to 90 days and also a variance as Water Country was a nonconforming use.

He stated that Water Country was a recreation use, an amusement type of use to provide entertainment mainly for children. The games were an accessory use and they do not believe the placement of the games was different from the prevailing use of Water Country neighborhood. This was a minor use and, under the special exception, the trailers would be removed after 90 days. He stated that the use was allowed by the ordinance, would present no hazard to the general public or create a traffic safety hazard. There would be no excessive demand on municipal services or significant storm water runoff. The games would provide alternatives to swimming for children and would not have any different effect on the neighborhood so there would be no detriment to surrounding property values. He noted that they had a letter of support from the Hampton Chamber of Commerce.

In response to questions from Mr. Parrott, Mr. Eugene Dean representing Water Country stated that the sound would go no more than 10 feet from the area and there would be no gambling associated with the games.

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 stated that the request was for a variance followed by a special exception and pointed out that the Planning Department had recommended stipulations should these be granted. Those were that the amusement trailers be located as they were indicated on the submitted map and that the special exception be phrased so there would only three trailers and any further increase would have to come before the Board. He asked if Mr. Witham was making a motion.

Mr. Witham said he would if it was wanted and made a motion to deny the variance as presented and advertised, which was seconded by Mr. Jousse.

Mr. Witham stated that he hadn't been to Water Country but his mother took his children and it seemed to be very clean and well operated as a water amusement park. His concern was that this kind of expansion was more carnival like and he didn't find that associated with a water park. It seemed to be a way of maybe leasing out some space within the facility to make money but he felt it cheapened it down. While he couldn't speak for everyone, his children had never gotten bored there. He felt it could be a slippery slope for whatever expansions could be looked at in the future. If the applicants were coming in to add another water slide, he might feel differently as it would be consistent with the existing nonconforming use, but he couldn't wrap his arms around this. It was too much of a detour.

Mr. Jousse stated he was in agreement. He had a problem with the way the whole thing was worded – to place something someplace in the land and any place they wanted to put it. Even with the suggested stipulations, he was not comfortable with granting a variance or special exception. In his opinion what was being requested and what was presently there were not compatible.

The motion to deny the variance and special exception was passed by a unanimous vote of 6 to 0.

II. ADJOURNMENT

It was moved, seconded and passed by unanimous voice vote to adjourn the meeting at 9:55 p.m.
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Respectfully submitted,

Mary E. Koepenick, Secretary

Minutes Approved 9-15-09