

**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 19, 2011

MEMBERS PRESENT: Chairman David Witham, Derek Durbin, Carol Eaton, Thomas Grasso, Arthur Parrott, Alternate: Robin Rousseau

EXCUSED: Alain Jousse, Charles LeMay

Before addressing the agenda items, Chairman Witham announced that, due to budgetary constraints, the position of Principal Planner had been eliminated. While he regretted not being able to address him in person, he thanked Mr. Lee Jay Feldman for all the valuable help and insight that he had provided to the Board.

I. APPROVAL OF MINUTES

A) February 15, 2011

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

II. PLANNING DEPARTMENT REPORTS

No reports were presented.

Ms. Rousseau assumed a voting position on the Board.

III. PUBLIC HEARINGS

- 1) Case # 4-1
Petitioners: James & Patricia Katkin
Property: 1400 Woodbury Avenue Assessor Map 238, Lot 5
Zoning district: Single Residence B

Description: To expand from a Family Day Care Facility for up to 6 children to a Group Day Care Facility for up to 12 children.

Request: Special Exception under Section 10.440, Use # 7.12, to allow a Group Day Care Facility for up to 12 children.

SPEAKING IN FAVOR OF THE PETITION

Ms. Patricia Katkin stated that she had owned and operated a child care facility for 34 years and had been granted a variance in 1992 to have up to 9 children. They would now like to request up to 12 children as a Group Day Care Facility. She stated that they transported the children to and from Head Start programs and school and also worked with special needs individuals. Their current hours were 7:00 a.m. to 4:30 p.m. and they were not asking for longer hours or more days. She noted that she had been President of a Child Care Association and had all the necessary licensing and credentials.

When Chairman Witham asked if she would touch on the standards to be met for a special exception, Ms. Katkin stated that the biggest issue was parking. They owned the last two houses on a dead end street and the properties that have to be passed to get to her property were businesses. They have 8 parking spaces and could enlarge that as there was land in back. Chairman Witham noted that they had previously received a special exception to have 9 children but were currently operating with 6, which Ms. Katkin confirmed.

Mr. Grasso noted that the applicant had indicated in her packet that she was looking to add 8 more children and asked if she was intending to have 17 or 12 children. Ms. Katkin stated that, although her actual goal was 12 children, she had originally asked for the highest number allowed in a group family childcare so they wouldn't have to come back if their plans changed. They then decided to stay with a request for 12 children as a higher number would involve more requirements, such as sprinkler systems. In response to Chairman Witham's question, she confirmed that, if her petition were approved, it would be for 12 children.

Ms. Eaton asked for more clarification as the applicant had indicated that she wanted to expand from group child care for 6, but there had been a special exception for 9. Ms. Katkin stated that she had a decision paper which said she was allowed up to 9. Chairman Witham clarified that zoning allowed for 6 so a special exception was needed to go beyond 6 and the applicant had received a special exception for 9. Ms. Eaton asked if they also owned 1420 Woodbury Avenue. Ms. Katkin responded that they owned 1380 and 1400 Woodbury and the house next to 1420. Ms. Eaton asked if she then had based the parking spaces on 1380 Woodbury Avenue. She noted she had visited the site and was confused by where anyone would actually park. The end of the road was blocked off and she didn't see how they would get to 1420. Ms. Katkin stated that was at the end of the day and they had blocked it off so that the family could go out and play. Referencing a submitted picture, she indicated where the parking would be. She stated that she had discussed the parking with Mr. Feldman who had showed her how to place it going toward the other property that they own.

Mr. Jim Katkin stated that they owned 1380, 1400 and 1430 Woodbury. 1420 Woodbury was the house in between and only accessible from Woodbury Avenue. The driveway was across from Market Basket and there was no access from the dead end portion of his street. He stated that no

external or internal modifications would be made to the facility and no increase in the days or hours of operation. The request was for capacity only. He stated that the State had already viewed the site and approved it for 12 pupils based on the needed square footage. There was parking along the side of a 107' driveway, along the front of 1380 and then another grassy area that could be used. The property was about 6 acres and there was plenty of room.

Mr. Witham noted that a letter of support had been received from Barbara Erickson, an abutter who could not be there in person.

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

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

Mr. Durbin made a motion to grant the petition as presented and advertised, which was seconded by Mr. Grasso. He stated that his first concern had been parking but there seemed to be ample. The use won't create a nuisance.

He stated that nothing had been cited to indicate that a hazard to the public or adjacent property would result from fire, explosion or release of toxic materials from this operation. No evidence was presented that there would be any detriment to property values or change in the essential characteristics of the area from odors, dust, noise or other irritants including unsightly outdoor storage. It did not appear, and there was no testimony to the fact, that any traffic safety hazard or increase in traffic levels would result. It did not seem that there would be any increased demand on municipal services. There would be no building expansion so the amount of storm water runoff would remain the same.

Mr. Grasso agreed noting that there had been a special exception granted for 9 children and the applicants were seeking to go to 12, which he felt could be supported.

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

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- 2) Case # 4-2
Petitioner: Bellwood Associates LTD Partnership C/O Festival Fun Park Properties
Property: 2300 Lafayette Road Assessor Map 273, Lot 7
Zoning district: Gateway
Description: To construct a new building entrance and turnstile into the park.
Requests: Variance from Section 10.331 to allow the expansion of a nonconforming use.

SPEAKING IN FAVOR OF THE PETITION

SPEAKING IN FAVOR OF THE PETITION

Mr. Ross Gittell stated that he and his wife had owned the property for 17 years. They were having some remodeling done to improve the functionality of the home. They were going to move the mudroom to a better location and were asking for a variance, not to change the existing footprint at all but, when they removed the mudroom, to frame the decking in its place.

Chairman Witham asked if where it said proposed demolition and infill, the demo was the stairs that currently existed. The stairs were coming out and the deck was going over the top. Mr. Gittell stated, “yes.” Again, they were just framing the deck that was already there.

**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. Grasso.

Mr. Parrott stated that there was no obvious public interest in this basically infill project at the back and not near property lines. It would be in the spirit of the Ordinance to allow folks to make improvements that will serve them better. He stated that there would be no overriding public concern that would argue against the project in the balance test. It was hard to see any effect one way or the other on the value of surrounding properties by these two small changes. He stated that the hardship in the property was demonstrated by the size of the house and its positioning on the lot. The long sides of the house were not parallel to the property line but were square to the street and then angled, resulting in a 3’ setback for the existing structure.

Mr. Grasso stated that he agreed, noting that the proposal was not to enlarge the existing house but just change some things and improve the day-to-day functionality.

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

- 4) Case # 4-4
Petitioners: Heritage Storage Center Inc., owner, and Glass Operating, LLC, applicant
Property: 70 Heritage Avenue Assessor Map 285, Lot 11-B
Zoning district: Industrial
Description: To allow Motor Vehicle Repair/automotive glass replacement as a special exception use.
Request: Special Exception under Section 10.440, Use #11.20, to permit Motor Vehicle Repair in the Industrial district.

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernard Pelech stated that he was appearing on behalf of Heritage Storage Center and distributed some exhibits. He noted that the area manager for Portland Glass, presently located on Lafayette Road, was also present. They proposed to move into a space at 70 Heritage Avenue formerly occupied by a spray-on bed liner business. He stated that the lot was in the Industrial District and the proposed use would be in one of the first “flex” buildings, with a business in the front and an industrial use in the back. He identified the submitted photographs and described what they depicted. Because the Planning Department had determined that it was considered automobile repair when a window was replaced, a special exception was needed for the use. Attorney Pelech stated that the space was ideal. The front part would be a showroom where all types of glass could be ordered for home delivery or installation. The back of the building would house the automobile glass replacement operation.

Attorney Pelech stated that this use was permitted in the Industrial District by special exception and he felt that all the standards were met. No hazard would be created from fire, explosion or release of toxic materials. This was a relatively safe use with no toxic materials used and little potential for fire. He noted that the use at the front of the property was retail. There would be no detriment to property values or change in the essential character of the neighborhood of the neighborhood. This was an industrial district and the operation would be contained within the walls of an existing building. There were no residences in close proximity and the operation would not generate noise or release of pollutants.

Attorney Pelech stated that Portland Glass was not a large generator of traffic and no traffic hazard would be created or increase in traffic congestion. The property had adequate parking and accessways and there was a signalized intersection nearby. This type of business did not generate any unusual demand for water or sewer, did not impact schools, or require extra police or fire protection. With the proposed use in an existing building, there would be no change to storm water runoff.

Ms. Rousseau asked for confirmation that the business was retail glass and windows, with no manufacturing or assembly on site. Attorney Pelech responded that she was correct, adding the the glass windows which they replaced were pre-made and the showroom just had samples which individuals ordered for their home.

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

Mr. Scott Crimmin identified himself as the area manager for Portland Glass. He mentioned that they had a number of similar locations, most of which employed 3 people. This was a small specialized glass operation operating from 8:00 a.m. to 5:00 p.m. Automotive replacement glass represented 20% of the operation. The vehicle was brought into the building, serviced and brought back. They did not have anything to do with automotive fluids or flammable materials. The balance of the operation was retail and this facility would offer them a great showroom for house products.

With no one further rising, the public hearing was closed.

DECISION OF THE BOARD

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

Mr. Grasso stated that the applicant was in front of them seeking a special exception and he felt that this operation met the standards. There would be no hazard to the public from fire or explosion or release of toxic materials as none were used in this process or at this location. There would be no detriment to property values or change in the essential characteristics of the neighborhood on account of the scale of the buildings, noise, dust or other pollutants. There would be no unsightly outdoor storage and vehicles would be picked up by 5:00 p.m.. He stated that there would be no creation of a traffic safety hazard or increase in traffic. This property was set back from Route One and was close to a signalized intersection. There had been a previous business at the location so there was no reason to believe that any excessive demand would be placed on municipal services. There would be no increase in storm water runoff onto adjacent property or streets as this was an existing building that was not being enlarged or changed. It had been stated that all the work would be done inside so he felt they could support this petition.

Mr. Parrott added that this seemed like a logical place to locate this business and it would be compatible with surrounding businesses.

Ms. Rousseau stated that she would like to support the motion but had difficulty with the language. She stated that this particular section would allow motor vehicle repair as outlined in Section 10.440, Use #11.20 of the Zoning Ordinance, which she read. She felt that if the Board gave the applicant sort of a blanket special exception for motor vehicle repair, it could mean a number of different things instead of stipulating that it was specifically for glass sales and installation. She felt most people would have no problem with the latter but getting into actual motor vehicle repair on that site raised a whole host of other questions. She stated that the special exception went with the property. She would like to put on the table a stipulation that the special exception would be specifically for glass sales and installation.

Chairman Witham stated that he was not opposed to the stipulation, but a motion was made as presented and advertised and he felt this was presented a certain way. For instance, a previous application had been presented for a 5' setback for expansion of a deck. It wasn't a blanket variance for 5' wherever they wanted. He felt they were covered, but if she wanted to put that out as a stipulation, they could see what the Board wished.

Ms. Rousseau stated that she was putting that on the table so that maybe Mr. Grasso would consider his motion to make it very specific to glass sales and installation instead of a blanket motor vehicle repair business. To her, it opened a lot of questions. The business could change hands and the special exception went with the property.

Chairman Witham stated he could call for a vote to amend the motion to include a stipulation that the motor vehicle repair be limited to auto glass repair. Mr. Grasso stated that it was fine with the maker of the motion. Ms. Rousseau asked if she could second that second motion. Chairman Witham responded that he would call for a vote by the whole Board on the motion to add a stipulation to limit the motor vehicle repair to auto glass repair.

The motion to add a stipulation to the original motion did not receive four affirmative votes and failed to pass. Voting against the motion were Messrs. Durbin and Parrott and Chairman Witham.

The motion to grant the special exception as presented and advertised was passed by a vote of 5 to 1, with Ms. Rousseau voting against the motion.

5) Case # 4-5

Petitioners: Brian M. & Susan M. Regan

Property: 28-30 Dearborn Street Assessor Map 140, Lot 1

Zoning district: General Residence A

Description: To divide an existing nonconforming lot containing two two-family dwellings into two lots, each containing one two-family dwelling, where both lots will have less than the required minimum lot area per dwelling unit and minimum street frontage; one lot will have less than the required minimum lot area; and one lot will have less than the required side yard.

Requests: Variances from Section 10.521:

Lot 1 To permit a lot with 3,940 s.f. of lot area per dwelling unit where 7,500 s.f. is required.

To permit 55.15’ of continuous street frontage where 100’ is required.

To permit a side yard setback of 3.7’ where 10’ is required.

Lot 1-1 To permit a lot with 6,432 s.f. of lot area where 7,500 s.f. is required.

To permit a lot with 3,216 s.f. of lot area per dwelling unit where 7,500 s.f. per unit is required.

To permit 95’ of continuous street frontage where 100’ is required.

Chairman Witham noted that the Board had received some direction from the City Attorney on this and he had spoken with him at length. They were going to move forward with this petition, strictly dealing with the merits in regard to the variance request. They were not going to speak to the standing that the petition had. An appeal had already been filed on that and they would probably be dealing with that the following month. He was not going to let that discussion go on. He reiterated that they were going to deal with the variance request as presented before them to subdivide this lot.

SPEAKING IN FAVOR OF THE PETITION

Mr. Christopher Berry stated that he was a principal member of Berry Survey & Engineering representing Ms. Susan Regan that evening. About 60 days ago, Ms. Regan contacted them in an effort to subdivide this parcel. They started to look into it from a land planning standpoint and realized that, from the lot area, frontage and side setback standpoints, they would need to come before this Board for relief. Since then, her former husband’s attorney had contacted them with regard to the standing of the application and whether Mr. Regan, also a partner in the property, should be party to the proposed variance. It was his understanding that, in the next thirty days, the

two owners of the property were going to take some time to review and negotiate how the property would be subdivided. There were also some other outstanding land planning items that would change the course of how the application was presented to the Board. He didn't know if the Board was in a position where they could table the hearing for that evening for 30 days while they could modify the application so that it would be amenable for both parties and maybe save a petition for rehearing and appeal at a later day. They felt that what would ultimately happen if the Board were to make any decision on the proposal that evening, was that the other party would be in a position where they would appeal and then it would be 30 to 90 days waiting for the appeal process to work through. They thought that they might be able to resolve this in the next 30 days if the Board were willing to table the application as presented that evening.

Chairman Witham stated that they could call for a vote to table this. If they felt that, during the negotiations over the next 30 days or so, the plan would change, whether it was even a lot line moving 12", they would have to resubmit because it would be a new advertisement to the public. In that case, it would mean withdrawing the petition and submitting a new one. They could table this one and move forward with it in a month unless something changed, in which case, a new application could be submitted. Mr. Berry stated, "o.k."

Chairman Witham stated that his sense was that they were requesting that this be tabled for a month. Mr. Berry confirmed that was their intent. They could withdraw the current application at a later point if the plan did change and resubmit a new one that might be more amenable to both parties.

Chairman Witham stated that there was a request before the Board to table this petition to allow the two parties to try and negotiate an agreement over the next 30 days and asked if anyone would like to make a motion. Mr. Grasso made a motion to table, or postpone, for 30 days only. He could see this possibly getting complicated in the future. To be fair to the Board, the City and the parties involved, they could give them 30 days to work it out and, if not, they reapply, either way. When Chairman Witham asked if that was a motion, Mr. Grasso replied, "yes," to postpone the petition for one month to the next meeting.

Ms. Rousseau stated that she might second but she had a comment. She didn't think they had legal standing. She felt they needed to withdraw their application because there was a co-owner on this property, regardless of Attorney Sullivan's position. They had a letter from Attorney John McGee, representing Mr. Brian Regan who said that this couldn't go forward legally without consent of the partner. She maintained that it would be best legally to withdraw it and then resubmit the application so she wouldn't vote in favor of tabling it. She stated that, "I think you need to withdraw and get on the same page with the person you own it with jointly and then reapply for an application. That's my position."

Chairman Witham stated that, obviously, they had the City Attorney who had taken a position different from another attorney's position. They had a motion to table and he would look for a second. Ms. Eaton stated that she seconded. Chairman Witham clarified that it was for one month. Ms. Eaton and Mr. Grasso confirmed. Mr. Parrott suggested that, technically, they say postpone it until the next meeting rather than say 30 days. Chairman Witham added until the next regularly scheduled meeting in May. Mr. Grasso and Ms. Eaton agreed.

The motion to postpone the petition until the next regularly scheduled meeting in May was passed by a vote of 5 to 1, with Ms. Rousseau voting against the motion.

6) Case # 4-6

Petitioner: RA, SJ and BN Goodman

Property: 930 Interstate By-Pass Assessor Map 142, Lot 16

Zoning district: Business

Description: To use the building for an automotive inspection station, automotive repair and commercial office space.

Request: Special Exception under Section 10.440, Use # 11.20, to permit motor vehicle repair (including motor vehicle inspection station).

Variance from Section 10.581 to allow vehicle repair on a lot with 0.333 acre where 2 acres is required.

Variance from Section 10.592.20 to allow vehicle repair less than 200 feet from a Residential district.

Variance from Section 10.843.21 to permit the outdoor storage of vehicles within 20' of the street right-of-way where 40' is required.

Variance from Section 10.1112.30 to allow 9 parking spaces where 10 are required.

SPEAKING IN FAVOR OF THE PETITION

Mr. Stephen Goodman stated that he had been a resident here since 1961. He was concerned that this variance be nonprejudicial and cited an article in the Portsmouth Herald on April 13, 2011 regarding property and zoning issues with respect to the property. He detailed his issues with the article, which he stated had numerous errors and omissions, and outlined some past issues he had with the City.

Mr. Goodman stated that the proposed tenant wanted to operate an inspection station and to repair vehicles which was incidental to his business, which did not require a variance. He stated that he was going to be proactive and discuss an issue which he felt would come up which had to do with the fence. He stated that the adjacent property owner had intentionally destroyed an existing fence separating two properties. This happened while he was renovating his building and yet he had refused to take responsibility. The issue was currently in litigation. He stated that the same neighbor had used the site as a trash dumping ground, which the applicant had personally picked up many times. He stated that the temporary fence erected to abide by City requirements had been knocked down and re-erected several times.

Mr. Goodman stated that normally he wouldn't have to be there for this current variance but he had let the grandfather clause expire because he had tried to let in a restaurant which was unsuccessful. Prior to that time, the property had contained a gas station or a repair facility of some type or another. He stated that to modify the building would be a hardship because it would necessitate knocking down the entire building and rebuilding it. He acknowledged that the condition in which the previous tenant left the property was deplorable and he had already removed 5 truckloads of trash. He indicated that the grass had been cut and would be maintained.

Mr. Goodman distributed an overhead shot showing the property on which he noted several features. He pointed out that the boundary line wasn't the fence but extended at least 10' beyond the fence and as you got closer to the highway, it angled out to greater than 10'. He stated that there was more than enough space to park 10 cars or 9 cars. Regarding the issue with outdoor storage, the prospective tenant had 2 trucks and 3 trailers which he would like to store outside during the night as a form of advertisement. There was no intent to store new cars. Regarding the variance from Section 10.581, he stated that this had always been a repair facility, so he respectfully requested that the variance be granted.

Ms. Rousseau asked how long this had been an automotive repair facility and Mr. Goodman stated that he had purchased it in 1977 and it had been automotive of one type or another from that time on. Ms. Rousseau stated that he was then just asking the Board make him whole again and reopen the same type of business that had been there. Mr. Goodman stated that was right. He briefly outlined the history of the property beginning with the building constructed in 1946. Ms. Rousseau noted that it had always been that type of facility and Mr. Goodman again confirmed it. He noted that there were no fuel tanks in the ground now. Ms. Rousseau stated again that there was nothing different in the variance request than what he had before and Mr. Goodman again concurred. He added that there would be no repairs done on the outside and assured the City that it would not turn into a dump.

Mr. Grasso asked what the commercial office space was as referenced in the description. Mr. Goodman responded that was why he had asked the prospective tenant to attend. He had a business which didn't require a variance and he needed an office. When Mr. Grasso asked if there were going to be two businesses in the building, Mr. Goodman responded that it was all the same business. Mr. Grasso stated, "automotive repair and commercial?" Mr. Goodman stated that the prospective tenant did automotive sealing so he used the office space to prospect for business. He stated that the tenant would be conducting automotive inspections, repairing his own vehicles and doing repair work for third parties so there would be one business there, all together.

Mr. Parrott stated that fourth variance request was to allow 9 parking spaces where 10 were required yet the provided sketch showed 8 spaces. He asked where the 9th was. Mr. Goodman stated that he had provided the sketch based on what the City advised him. He stated that any number of spaces could be added on which was why he had gone into detail about the extra land beyond the fence. The picture that he had provided only had a view of 4 spaces but they could get at least 6 spaces in there. Mr. Parrott asked if he was saying that the sketch was provided by the City and Mr. Goodman stated, "yes." Mr. Parrott stated that he didn't think so, unless they were talking about different sketches. Mr. Goodman maintained that was provided by the City. Mr. Parrott stated that, regardless of who provided it, his question was that they were asking for 9 spaces and the sketch clearly showed 8. Mr. Goodman stated, "o.k." Mr. Parrott stated that his question was where was the 9th space. Mr. Goodman stated that he was saying that, if they looked at the overhead view, on the right hand side where it said 4 spaces, they could put on another 1 or 2 spaces. Mr. Parrott stated that both the crude sketch and the aerial showed 8 spaces and it was not the Board's place to say that 9 would fit. Mr. Goodman stated that he would like to rephrase this. He had been advised by the City that he should have 9 spaces. If they felt so inclined that 4 was all that he could get, then 4 was what it would have to be. He immediately corrected that statement to be 8 spaces, not 4.

Chairman Witham stated that they weren't going to resolve or design it now. If there were a positive motion, there could be a stipulation that the applicant work out the 9th parking spot with the Planning Department. When Mr. Parrott stated, "if it fit," Chairman Witham stated that they could leave it with the Planning Department to ensure that a 9th spot would fit on the property.

SPEAKING IN OPPOSITION TO THE PETITION

Mr. Thomas O'Neil, of 106 Kane Street, Mr. Richard Coombs of 100 Kane Street and Ms. Marisa Dibiaso of 146 Kane Street, all close abutters to the property, spoke in opposition. Among the issues and concerns that they raised were the following:

- For the past 20 years there had been no significant improvements to the property and code enforcement records showed that it had been an ongoing effort to have the property comply with City ordinances.
- That section of the road was a gateway to the City of Portsmouth and it would not be in the interest of the residential area or the City to approve the variances.
- The property has looked like a salvage yard. There have been sanitary, traffic and parking issues and one abutter maintained that two fuel tanks remained on the lot. The fence remains in disrepair.
- A map was presented showing 14 residential properties in close proximity and, given the history, it was maintained that granting the variances would be detrimental to those properties.

Ms. Rousseau raised a number of questions with one or more of the abutters including their awareness of the state of the property when they moved in, their awareness of the potential issues with any business moving in and requiring a variance, and their awareness that many of the problems were caused by a former tenant. To the latter, one abutter responded that it was the same landlord. Chairman Witham commented that he didn't think it was a fair statement to say that any business would require a variance.

SPEAKING TO, FOR OR AGAINST THE PETITION

Mr. Goodman stated that he could not control his tenant. He found some of the depictions disgusting but it was a commercial area and there would be problems. He stated that he had found about the dumped sewerage problem and the party involved cleaned it up. Regarding the problem of parking on Kane Street, he stated that the police had been called for vehicles without plates and they were removed but it had no bearing on his former tenant. He stated that the City had only sued him once and the suit was dropped because the evidence presented would not stand scrutiny. He apologized for the actions of his former tenant and stated they were trying to improve with new tenants. He noted that the picture that had been handed out showed a junk yard where it now was grass. He would investigate the issue of the oil tanks.

Ms. Rousseau noted that he had not spoken of hardship. The property had been available for awhile and she asked if there was some contamination that would make it difficult for any other type of business. Mr. Goodman responded that the party responsible for knocking down the fence had complained to the state about contamination but the EPA had tested the property twice and

found it clean. He stated that most people approaching him were a variation on automotive. He noted that the site was industrial and, as Ms. Rousseau had pointed out, the people knew what they were getting into when they moved in. Ms. Rousseau stated so, basically, the only tenants that would want to move in were automotive and Mr. Goodman responded, “right,” adding that otherwise he couldn’t do anything. He stated that was the hardship.

Mr. Witham noted that a letter had been submitted in opposition by Attorney Christopher Hilson on behalf of Thaddeus Drabkowski and Del Paone, owners of the property at 940 U. S. Route 1, who had similar comments to those heard from the abutters in attendance.

With no further comment, the public hearing was closed.

DECISION OF THE BOARD

Chairman Witham stated that they should be approaching this site as a clean slate and not grandfathered for anything at this point. It was a lot with a building on it and they should see if it met the requirements in order to be granted the variances and special exception.

Ms. Rousseau noted that there were a number of variances on the table. Were they going to take it one at a time or as a package deal.

Chairman Witham felt they could separate the special exception from the variances or put it all together in one motion. He thought the variances could be kept together as they were closely related.

Ms. Eaton stated that she had an issue with the lot size, noting that they had a third of an acre lot for the proposed use as an automotive inspection station. She felt that was not sufficient to support that kind of business as they had seen in other areas of the city.

Chairman Witham stated that was his biggest concern, particular with a third of an acre lot that was triangular in shape which had so much area that was not really useful. It seemed a fairly intense use for that size lot, as opposed to the motorcycle repair, especially when they we’re talking about parking 3 trucks there and another vehicle for automotive repair.

Ms. Rousseau had a comment about his reference to the lot as a clean slate as with other variances they always had to deal with the historic use of the site. Historically, this was what the property had been used for since maybe earlier than the 1970s. That also needed to be considered in relationship to the hardship issue for this particular owner. She stated that the owner had a right to lease out his site. It had been on the market for a while and all he was getting was automotive requests, which seemed very reasonable as that had historically been the use for the site.

Chairman Witham stated that understood her point. Obviously history played a role but they had to consider it as an empty building, not an automotive repair building.

Ms. Rousseau stated that the building itself was set up as an automotive type of business. It looked like a gas station and she thought that was the attraction of the site.

Chairman Witham agreed that those were all variables that worked in favor of continuing that use but it was necessary to meet all the criteria. He called for a motion and noted that, if there were a motion in favor, they might want to look at the 1988 approval for a special exception. That approval had five stipulations that seemed fairly well thought out.

Mr. Parrott made a motion to deny the special exception and the variances. He stated that a special exception meant that the use was not a logical one for the zoning and it was only granted if all the requirements were met, as opposed to a permitted use which was deemed appropriate for the area. He agreed with the comment that a third of an acre was a very small amount of space. He noted that this lot already had a building on it and it was proposed that numerous trucks would be parked with 9 parking spaces, which left very little space. He reviewed the variances required noting that a vehicle repair use can be noisy and smelly and there was only 40' from this property to the back of some of the residential properties.

Considering the special exception, Mr. Parrott stated that the Board had to consider a change in the essential characteristics of the neighborhood with respect to noise, heat, outdoor storage and the other standards. It was crystal clear that, in the past, there had been a large amount of unsightly outdoor storage and the applicant had stated that he couldn't control the actions of his tenants. If he couldn't do that in the past, the situation might continue into the future with a similar use.

Addressing the criteria for the variances, Mr. Parrott stated that he had to conclude that with regard to the criteria that the variance not be contrary to the public interest, such a use on such a small lot so close to a residential zone did not meet that test. In his judgment, it would be contrary to that interest, as represented by the neighbors who had spoken of their personal experiences. He stated that it would not be in the spirit of the Ordinance to allow one neighbor on a regular continued basis to cause concerns to the neighborhood and there had been testimony that this had been the case. Looking at the diminishing of the value of surrounding properties, Mr. Parrott stated that a fair and objective look at past violations might cause prospective buyers not to purchase a surrounding property. He stated that it was not the use itself, but the way it had been implemented. If the previous uses had kept up appearances, he felt there would not have been concerns expressed that evening.

Mr. Grasso stated that he agreed. He added, for the special exception, that there should be no unsightly outdoor storage of equipment, vehicles or other materials so he couldn't support it on that basis. He also felt that pollutants were often associated with that type of vehicle repair and were not allowed under the special exception standards. Regarding the standard for not creating a traffic hazard or congestion, a repair facility was going to have people coming from parts and other suppliers with people coming and going constantly.

Ms. Rousseau stated that, in denying this request, she felt that they were really tying the property owner's hands and that the only thing that could possibly come before them was a motor vehicle service station which would still require an acre. She stated that almost any use would have to come before the Board.

Chairman Witham stated that he had been torn on this request. He felt that there had been a terrible history but maybe a new tenant could step up and make that right. His concern was the very small lot. Regarding the owner having his hands tied, he thought he had looked at some

other uses, but the reality was that the building was in such disrepair that it was not attractive to other businesses and needed some capital improvement. He felt that auto repair was too much for this small lot and would support the motion.

Ms. Rousseu stated that she heard his point, but with a use such as the previous possible restaurant use, there was not a lot of room for parking. The site was a real issue and it was a hardship as to what the owner could do with it. She would support the variances and special exception and allow the owner to have a second chance with a new tenant.

The motion to deny the special exception and variances was passed by a vote of 5 to 1, with Ms. Rousseu voting against the motion.

IV. OTHER BUSINESS

Mr. Grasso stated that, with respect to the packet submitted by the lawyer for one of the applicants that evening, he felt it was unfair to have something this large presented to the Board at the last second. A number of other members simultaneously agreed. The clerk advised that individuals who ask to bring in material beyond the mailing of the packet are advised that all that can be done is place the material before the members on the night of the meeting with no guarantee that there will be any time to review it. Ms. Eaton was concerned that there would be an assumption that the members had reviewed the material because it was in front of them when in reality they had not had time to consider it. Ms. Rousseu commented that there were some attorneys who were there all the time who felt they could bring a ten page brief to review at the last minute and the other side hadn't seen their positions. Chairman Witham stated that he didn't think the applicant or interested parties could be stopped from submitting what they wished but that the clerk should make it clear that the material may not be read.

Mr. Parrott asked that it be put into the record that material had been submitted late. He and Ms. Eaton were concerned about the impact of material submitted this way if a petition were brought to the courts. Ms. Eaton wondered if this material could be identified as not part of the record. Mr. Parrott agreed it should be crystal clear that there was a late submission and insufficient time to review it. Mr. Durbin stated that was or was not in the record should be identified. Chairman Witham stated that perhaps this issue was something that Attorney Sullivan could address. Mr. Parrott concluded that maybe one of the members should hold up the material and make it a point for the record that this was submitted late and they had not had time to review it. Chairman Witham stated that he could take on that role. An exception was when material was distributed and then the presenter went on to walk them through it so that it was on the record.

V. ADJOURNMENT

It was moved, seconded and passed by unanimous voice vote to adjourn the meeting at 8:55 p.m.

Respectfully submitted,

Mary E. Koepenick
Administrative Clerk