

**MINUTES OF THE BOARD OF ADJUSTMENT MEETING
PORTSMOUTH, NEW HAMPSHIRE**

MUNICIPAL COMPLEX, 1 JUNKINS AVENUE

EILEEN DONDERO FOLEY COUNCIL CHAMBERS

7:00 p.m.

August 16, 2011

MEMBERS PRESENT: Vice-Chairman Arthur Parrott, Derek Durbin, Thomas Grasso, Alain Jousse, Charles LeMay and Alternate: Robin Rousseau

EXCUSED: Chairman Witham, Ms. Eaton

Vice-Chairman Parrott announced that Petitions #7 and #8 regarding 800 Lafayette Road had been withdrawn by the applicant.

I. APPROVAL OF MINUTES

- A) May 17, 2011
- B) June 21, 2011 – Excerpt of Minutes

In separate motions, it was moved, seconded and passed by unanimous voice vote to approve as presented the Minutes for May 17, 2011 and the Excerpt of Minutes for June 21, 2011.

II. PLANNING DEPARTMENT REPORTS

There were no reports presented.

III. OLD BUSINESS

- A) Motion for rehearing regarding the property located at 30 Gardner Street:

- (1) Request to postpone to the September 20, 2011 meeting.

Mr. Grasso made a motion to postpone the Motion for Rehearing to the September meeting, which was seconded by Mr. Jousse and approved by unanimous voice vote.

- (2) If request to postpone is denied, consideration of the motion for rehearing.

With approval of the request to postpone, Vice-Chairman Parrott announced that this item would not be heard that evening but would be heard at the next regular meeting on September 20, 2011.

Ms. Rousseau stated that the Planning Department said they did not have any updates, but there was one on their desks (a memorandum on potential changes under consideration to the Zoning Ordinance that was not intended to be part of the Agenda but had been passed out to the Board prior to the meeting in lieu of a mailing). She talked about the contents of the memo, stating that she felt the members of the public would be interested in the changes and referred to a September 1, 2011 work session of the Planning Board. Vice-Chairman Parrott stated that he understood its provision to the Board at that time to be strictly informational. In response to a further query from Ms. Rousseau, he stated that a copy could be obtained in the Planning Department if any member of the public were interested.

IV. PUBLIC HEARINGS

1) Case # 8-1

Petitioner: Gosselin Liv. Tr., A. E. & F. Gosselin, Trustees, owners, Kelley Bowers,
applicant

Property: 960 Sagamore Avenue

Assessor Map 201, Lot 2

Zoning district: Mixed Residential Business

Description: Establish a boutique/salon use.

Requests: Special Exception under Section 10.440, Use #7.20, to allow the proposed use.

SPEAKING IN FAVOR OF THE PETITION

Ms. Kelley Bowers stated that she lived at 111 Fern Avenue in Rye, New Hampshire. She had just moved from Florida, where she had a similar business. She stated that she was an artist and a photographer and about 70% of her store would be an art boutique with original artwork. To supplement this, she would also operate as a hair dresser, with a one-sink hair salon in the back and no nails or massage services. She stated that all the requirements in the paperwork she was provided would be met, noting that much of her art boutique business would be drawn from the visitors to the adjoining restaurant.

Mr. Grasso asked if she could discuss the failed septic system and its replacement. Ms. Bowers stated that she wasn't involved with that but didn't believe it was a failed system. She deferred to the owner of the property who was present.

Mr. Tom Gosselin stated that he lived at 1 Scarborough Way, in Rye, New Hampshire. He indicated that the septic had failed and they were on a holding tank which was being pumped regularly. He noted that they were not looking for a special exception for that system, noting that the Seacoast Mental Health Center, across the street, was in exactly the same situation with a holding tank. In response to further questions from Mr. Grasso, including a reference to a letter from the City Health Inspector, he stated that the problems had been going on for four years and a sewer line had been proposed into the area at that time but was still in the works. He stated that

the letter from Ms. McNamara assumed they were using the same septic system but, he reiterated, they were now on a holding tank.

Ms. Rousseau noted that one of the criteria for granting a special exception was that there be no toxic materials or hazard to the general public. Mr. Gosselin stated that, as far as he had seen, that would refer to something going into a septic and into ground water which was not the case. When she asked if there were no hazard with a holding system, he stated that there was no hazard, that everything got pumped. Ms. Rousseau asked about the second standard which was that there be no hazard on account of potential fire or explosion. She asked if the beauty salon would be using any toxic material and Mr. Gosselin stated it would not, “no.” She asked how about standard #5 regarding no excessive demand on municipal services, including water and sewer and Mr. Gosselin stated that there was one sink for washing hair. He answered in the affirmative when Ms. Rousseau asked if it all hinged, should the request be approved, on the satisfaction of the Health Department. When Mr. Parrott asked if he had responded to the letter from the Health Officer, Mr. Gosselin stated he had not talked with her but previously had a conversation with someone from public works. He had been waiting to hear what was going on before responding to the Health Officer. He reiterated that her letter was dealing with the septic system, which no longer existed. The situation was in the neighborhood and he was not the only business affected. Further discussion followed between Messrs. Parrott and Gosselin with Mr. Parrott pursuing why Mr. Gosselin had not taken some action or put something in writing in response to the letter from the City and Mr. Gosselin reiterating his previous comments about the disconnected septic, the holding tank, and the response pending from Public Works.

Mr. LeMay asked how the letter about the septic had come about and Ms. Bowers stated that her application probably opened the floodgate. She noted that they had approval from the State Department of Environmental Services, but the City had come back and said they couldn't go ahead because of the septic issue so she had then contacted the owner and that's how it all started.

Mr. LeMay stated that they could perhaps deal with the zoning part of the issue with a permit pending. Mr. Grasso asked how soon the salon would be open if the petition were approved that evening and Ms. Bowers stated that she was focusing mainly on her artwork and, even if she were to start working as a hairdresser, it would be on a part-time basis with one or two clients a week. Again, they wanted to focus more on the artwork and photography. After they received the letter from the City, they put everything on hold and had much work to do. They also had to build a clientele. Mr. Gosselin added that licensing would have to be done through the Health Department to carry on a salon. Ms. Bowers stated that she would have to submit her salon license application to the State as well so it was going to take some time.

Mr. Grasso asked if the status of the septic wasn't going to be a deterrent to opening, if the special exception were granted. Mr. Gosselin stated that, from what had been happening in the neighborhood, he didn't see that there would be a concern. There was a failed system that was no longer used which still had to be remedied but he didn't see a huge problem.

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 special exception as presented and advertised, which was seconded by Ms. Rousseau.

Mr. Durbin stated that he didn't see a problem with the existing septic/holding tank system and noted that ultimately a new system would have to be put in, either for this property or a shared system. He stated that the salon was a permitted use by special exception. There would be no hazard to the public or adjacent properties on account of fire explosion or release of toxic materials. He felt that was addressed by the description of the use of the property and the number of visitors. He felt this was a pretty benign use. Noting that no one had spoken in opposition, he stated that there should be no diminishing of property values. Mr. Durbin stated that he saw no increase in traffic as a result of the use so that no traffic safety hazard would be created. He noted that no increase in municipal services had been stated. With no changes to the exterior of the building or footprint, he stated that there should be no increase in storm water runoff.

Ms. Rousseau stated that she agreed on all points, adding that this was a reasonable use for this location.

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

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- 2) Case # 8-2
Petitioner: Smith, Smith and Ward LLC, owner, Leslie Williams, applicant
Property: 1338 Woodbury Avenue, Unit 202, Lot #9 Assessor Map 237, Lot 70
Zoning district: Mixed Residential Business
Description: Construct an 8' x 14' rear sunroom.
Requests: Variance from Section 10.521 to allow a 12'± rear setback where a 15' rear setback is required.

SPEAKING IN FAVOR OF THE PETITION

Mr. Tom Watt stated that he was with Morgan Exteriors representing the owner. He noted the current conditions with a 6' x 25' deck on the back from which they would be removing a 6' x 14' section, leaving a 6' x 11' deck. They would then be adding an 8' x 14' sunroom. When Mr. Parrott asked for some additional information, he referred to a framing diagram in the packet and noted that they were dealing with the setback to the back lot line. He pointed out on an exhibit where the lot line was and noted that the back neighbor had spoken to Ms. Williams and had no problems with the proposal. In response to further questions from Mr. Parrott he confirmed that the existing deck was 6' off the back wall of the house and the proposed would be 8' so the net change was 2' to the rear property line.

Ms. Rousseau noted that the Board had to look at the criteria and, with regard to the hardship section, she asked if he was representing that the property could not be reasonably used without a variance and that this couldn't be built out without an increase toward the lot line? Mr. Watt

stated that there was no reasonable way to do it without incurring unreasonable expense as they would have to move the whole building. Mr. Watt also agreed when she asked if this was the best he could do space-wise.

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

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

Ms. Rousseau made a motion to grant the variance as presented and advertised, which was seconded by Mr. Grasso.

Ms. Rousseau stated that granting the variance would not be contrary to the public interest or change the essential characteristics of the neighborhood. She stated that substantial justice would be done by allowing the applicants to use the property in a reasonable way. They had looked at alternatives and there were none better. This was a straightforward petition and there should be no diminution in the value of surrounding properties. Regarding the spirit of the Ordinance, Ms. Rousseau noted that the applicants had been asked if they could bring the sunroom more in compliance and they had represented that this was their best effort to do so and the most conservative design. She felt that all the criteria had been met.

Mr. Grasso stated that he agreed, noting that this was an area where the lot sizes were not that big. The proposed sunroom would still allow 12' to the property line, which he felt was reasonable given the minimal nature of the request.

The motion to grant the variance as presented and advertised was passed by a vote of 5-1 with Mr. Jousse voting against.

- 3) Case # 8-3
 - Petitioner: Karen Mazzari & Stephen W. Sanger
 - Property: 52 Mendum Avenue Assessor Map 149, Lot 58
 - Zoning district: General Residence A
 - Description: Construct a 12'6" x 5'6" rear deck and 4' x 4' stairs.
 - Requests: Variance from Section 10.321 to allow the expansion of a nonconforming structure.
 - Variance from Section 10.521 to allow building coverage of 30%± where 25% is the maximum allowed.

SPEAKING IN FAVOR OF THE PETITION

Mr. Steve Sanger stated that he lived at 52 Mendum Avenue. They were trying to revisit what had first been granted to them in 1999 when they had to postpone the work. They felt they were now presenting a more favorable plan to the Board with a lot coverage increase of 68 feet, not the

previous 120 s.f. In addition to the much smaller coverage area, they moved the deck egress to the center of the house, improving the setbacks. Mr. Sanger stated that they had approached the neighbors to either side who liked the plan and felt it would improve their values. He stated that nothing about the design would present a danger or annoyance to anyone. Noting that he had a picture of the backyard if the Board wanted to see it, Mr. Sanger stated that opening up the back would allow better solar gain to the house and greater use of the garden.

Mr. Sanger stated that granting the variance would not be contrary to the public interest and would enhance property values. In the spirit of the Ordinance, the plan would provide them with greater enjoyment of their property and lower fuel costs with solar gain. He noted that there would be just a 1% change in coverage over what currently existed.

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

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

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

Mr. LeMay stated that granting the variance would not be contrary to the public interest. There would be no threat to the public health, safety and welfare. The spirit of the Ordinance would be observed as they would have essentially the same coverage as they now have. Substantial justice would be served as the applicants need back stairs in good repair and the expansion would be modest without infringing on the rights of individuals or the general public. He could not see that there would be any diminution in the value of surrounding properties. In the hardship test, Mr. LeMay stated that there was no substantial relationship between the purposes of the Ordinance and its specific application to this property as there would be only a modest change in coverage.

Mr. Grasso stated that he agreed, noting that the proposed stairs and deck were actually in the center of the lot. The applicant was before them because the size of the lot was very small with the house covering 85% of the width. He didn't feel that this proposal would have any negative impact and the structures were actually set back from the side and back.

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



4) Case # 8-4

Petitioner: Searay Realty, LLC, owner, Archie E. DeFlorio, applicant
Property: 445 Route One Bypass Assessor Map 234, Lot 3
Zoning district: Office Research
Description: Establish a retail use.

Requests: Variance from Section 10.440, Use #8.31, to allow the proposed use.

SPEAKING IN FAVOR OF THE PETITION

Mr. Archie DeFlorio stated that he was the owner of Cash for Gold, which had started a number of years ago before the recent television advertising. He stated that they buy precious metal, gold, silver and coins and were not a pawn shop. He stated that he had registered the trade name many years before, noting that some businesses using the same name were pawn shops which his was not. He outlined a program of cooperation with the local police in detecting crime and noted that he had an A-plus rating with the Better Business Bureau. Mr. DeFlorio stated that he had made it a condition of his lease that he first get his license with the City, which was issued after they checked his background. He had then signed a two year lease and several months into the lease when applying for a sign permit, he was told that the district was Office Research and a retail use was not allowed. He maintained that they were not a retail operation and didn't sell, noting that they did not have customers coming in and out as did several of the nearby businesses, including an auto dealership across the road. Mr. DeFlorio maintained that there was no residential area to be impacted and traffic would not be affected. He stated that the hardship was that they were already there and had signed a two year lease, which he would like to extend.

Ms. Rousseau stated that the variance would be granted to the property and that the owner should explain how they met the criteria.

Mr. Jack Kimball stated that he, as Searay Realty LLC, was the owner. He stated that they had made some renovations but had been 60% vacant ever since. They finally had some interest and were thrilled to have a great tenant in Mr. DeFlorio who had paid a year in advance. He stated that the major hardship was that the space was on the corner of Borthwick Avenue. He had actively explored a medical use but there was no interest because the single curb cut went south. He noted that Enterprise was there for several years before he bought the building and they had probably applied for a variance. While he was hopeful to get additional tenants, it was hard with the Office Research zoning where most of the businesses on the street were retail. He stated that a difficulty would be created due to the one-year advance payment. Mr. Kimball emphasized that Mr. DeFloria purchased items and did not sell them. He stated that the traffic generated by the business would be minimal.

Ms. Rousseau stated that she was very familiar with the building and felt it was a tough spot for Office Research and especially for a doctor's office with people coming and going. She was trying to understand the hardship. It was a unique property and she understood the issues and why it was not reasonable to put in an office use. Mr. Parrott asked the square footage of the unit and Mr. Kimball indicated it was just shy of 1,000 s.f. The building was deceiving because there was a whole, completely renovated, level underneath for which they were not able to get anyone.

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

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

Mr. LeMay stated that he was looking at some of the definitions in the zoning and it wasn't clear to him that a variance was needed. Retail sales had a definition where people would actually come in and buy something and take it away, but permitted in the zone, for example, were financial services offices. He stated that someone bringing in gold and bringing back cash sounded like a financial service to him and closer than retail. He added that general service establishments were also permitted. Mr. Parrott interjected that it was pretty broad and Mr. LeMay agreed. He wondered if they had to "go over a hurdle" to get a variance if they believed it was not even necessary, especially to create a retail business which would go forward with the property.

Ms. Rousseau agreed with his point, noting that, based on what the tenant represented, it seemed like a financial services. The applicant was not having people come in and browse his offerings for sale. He was not selling jewelry, which would be a retail establishment. This was gold, which like stocks and bonds was even sold on the exchange. Mr. Parrott stated that certainly it had the aspect of retail in that anyone could walk in off the street but, on the other hand, was not what they would normally think of as retail, where people went and bought a product. He felt that Mr. LeMay's point was very well taken. He didn't know if it was within their purview to say that a variance was not needed, but they could make it their position.

Mr. Durbin stated that his thought was, and he had never looked into it, whether they could just table the petition pending a legal opinion from the city attorney's office as they must have had some precedent supporting the Planning Department's decision to classify this as a retail use. He stated that, if they moved forward and granted the petition, they would be essentially granting a retail use which could be carried forward in the future. He noted this was a City position which the applicants could have appealed but that could be expensive and he felt the solution would be to table it.

Mr. Parrott stated that they could postpone or table it, with no prejudice to the applicant. It would allow them the opportunity to obtain a written opinion from the City and, as Mr. Durbin had stated, avoid the possibility of inadvertently creating a use which they might not otherwise think was appropriate. Mr. LeMay stated that they were already into it now, but he supposed this could have been an appeal from an administrative decision that this was a retail use. Mr. Parrott agreed.

Mr. Durbin made a motion to postpone the petition to the next month, which was seconded by Mr. LeMay and passed by unanimous voice vote.

Mr. Parrott addressed a remark to the applicant asking if what the Board had just done was clear. Mr. Kimball asked from the public seating area if they had to do anything and Mr. Parrott stated they did not. He suggested, however, that they call the Planning Department the following day just to confirm that his understanding with them was what the Board had discussed that evening and whether he needed to come back.

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- 5) Case # 8-5
Petitioner: Brian L. Neste & Bradford J. Byrd
Property: 3 Sagamore Grove

Assessor Map 201, Lot 7

Zoning district: Single Residence B

Description: Renovations to existing residence.

Requests: Variance from Section 10.321 to allow the reconstruction of a nonconforming structure.

Variance from Section 10.521 to allow a 22'6"± front setback where a 30' front yard is required.

SPEAKING IN FAVOR OF THE PETITION

Mr. Brian Neste stated that 3 Sagamore Grove would be his primary residence after construction. What they wanted to do was replace one main gable and raise the height of the porch from 6'2" to 7'9". Behind the hip roof were two other additions with the shed off the front so there were actually six roof lines that came together with a very shallow pitch. He stated that any changes to this lot would require a variance and noted that the footprint wouldn't be changed. It just was a simple, conservatively designed gable.

Mr. Parrott asked if he would like to hit the five criteria and Mr. Neste stated that the variances would not be contrary to the public interest. The existing roof was structurally unsound and the existing porch would not meet code. He stated that the new roof would increase property value and, therefore, the tax base. When Mr. Parrott asked if he wanted to comment on the other four criteria, Mr. Neste stated that denial of the variance would cause unnecessary hardship. He stated that strict imposition of the zoning laws would interfere with a reasonable use of the property as the front walls were only 6'2" and did not meet code. Replacing the existing roof would not be cost effective. He noted that the roof had a shallow pitch, subject to snow accumulation, and any changes would require a variance. He stated that granting the variance would be in the spirit of the Ordinance. The new wall heights and roof would be aesthetically pleasing and would not exceed the existing footprint. He stated that granting the variance would do substantial justice and allow him to renovate.

In response to questions from Mr. Grass and Mr. Jousse, Mr. Neste confirmed that this was just a vertical change with no change to the living area. They would be only be repairing the roof over the center portion of the house where it was needed. The new gable would go over the other shed roof which could be seen on Plan E-2. On Plan E-3, the right elevation showed where all the roof lines came together.

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

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

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

Mr. Grasso stated that this was a roof that had failed and the applicant wanted to simplify some of the angles of the roof. He had to come before the Board as the house was nonconforming but

noted this was just a vertical change and roof repair which would not expand the footprint. He stated that granting the variances would not be contrary to the public interest as this was a limited use road. The spirit of the Ordinance would be observed as the footprint would not be expanded, just a modest vertical increase and some repairs. In the justice balance test, there would be no benefit to the public in denying the petition. He stated that the hardship was that the home existed on the lot and a vertical change would require a variance. He felt there was nothing in the proposal that would diminish the value of surrounding properties.

Ms. Rousseau stated that this was minor repair work which would allow the property to be used in conformance with the Ordinance and she felt it was a reasonable request which should be granted.

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

6) Case # 8-6

Petitioner: Diane Stradling

Property: 351 Union Street

Assessor Map 134, Lot 4

Zoning district: General Residence A

Description: Replace and expand existing porch and stairs

Requests: Variance from Section 10.321 to allow the expansion of a non-conforming structure.

Variance from Section 10.521 to allow an 18"± left side setback where a 10' side yard is required.

Variance from Section 10.521 to allow a 2'± front setback where a 15' front yard is required.

SPEAKING IN FAVOR OF THE PETITION

Ms. Diane Stradling stated that she lived at 351 Union Street, in a home built around 1877 before any current zoning regulations. The house sat on one of the property lines, which was basically the same situation as most of the homes in the neighborhood. Her request was to replace two sets of failed stairs and a failing porch with one set of stairs and a landing with no roof. She stated that the property would be brought more into compliance and would alleviate a situation where there was not enough landing so you had to step down to open the door. Referring to the photograph in the packet, Ms. Stradling stated that currently the front stairs didn't exist. As they could see in the photograph, the house was just a few inches from the property line. They planned to expand the porch forward a little and come around to the side with one set of stairs to the front door.

Ms. Stradling stated that she had spoken to her neighbors who had submitted a letter and petition in support, which also were in the packet. She referred to the plan which showed how it would look, noting that there would be no negative impact on the light and air of neighbors.

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

With no one rising, the public hearing was closed.

DECISION FO THE BOARD

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

Mr. Jousse stated that granting the variances would not be contrary to the public interest. They were actually replacing a set of stairs that was now nonexistent and the landing on the left side of the house was not in good shape and was really a safety issue. He stated that granting the variance would observe the Ordinance and substantial justice would be done. He noted that the house dated way back to before City Ordinances when houses were placed as close to the street as possible. He felt that was the special condition of this piece of property and the variances should be granted.

Mr. Grasso agreed, noting the condition of the property with failed steps and a porch. He felt there was really no other remedy for the applicant to pursue other than a variance and the applicant would benefit from a more functional design.

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

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- 7) Case # 8-7
 Petitioner: Sureya M. Ennabe Rev. Liv. Trust, c/o C. N. Brown Company
 Property: 800 Lafayette Road Assessor Map 244, Lot 5
 Zoning district: Gatew
 Description: Place stripes on an existing canopy.
 Requests: Appeal from the decision of the Code Officer that the proposed stripes on a canopy are signs as defined in the Ordinance.

As noted at the beginning of the meeting, this petition was withdrawn by the applicants.

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- 8) Case # 8-8
 Petitioner: Sureya M. Ennabe Rev. Liv. Trust, c/o C. N. Brown Company
 Property: 800 Lafayette Road Assessor Map 244, Lot 5
 Zoning district: Gatew
 Description: Place stripes on a existing canopy.
 Requests: Variance from Section 10.1251.10 to allow 678.9 s.f of sign area where the maximum allowed aggregate sign area is 222 s.f.
 Variance from Section 10.1251.20 to allow two canopy signs with an area of 96 s.f. each, and two canopy signs with an area of 180 s.f. each, where the maximum allowed sign area for a canopy sign is 20 s.f.

As noted at the beginning of the meeting, this petition was withdrawn by the applicants.

9) Case # 8-9

Petitioner: 2700 Lafayette Road LLC

Property: 2700 Lafayette Road

Assessor Map 285, Lot 12

Zoning district: Gateway

Description: Establish an automotive and exhaust repair business.

Requests: Special Exception under Section 10.440, Use #11.20, to allow the proposed use.
Variance from Section 10.581 to allow a vehicle repair use on a lot less than two acres in area.**SPEAKING IN FAVOR OF THE PETITION**

Mr. Chris McInnis stated that he lived in Portsmouth and stated that he was there with Mike Wallace, one of the owners of Lou's Custom Exhaust. He thought that Attorney Pelech was going to be there that evening to present but would go ahead. He stated that he had sold the property at auction and 2700 Lafayette Road LLC had bought it. They wanted to establish a use that was in keeping with the neighborhood. He stated that this would be all exhaust work with no oil changes. He had visited other locations and found it to be a very clean operation.

When Mr. Parrott asked if he wanted to address the variance or special exception, Mr. McInnis referred again to the absence of their attorney. Mr. Parrott stated that someone should address them. Mr. McInnis stated that one of the criteria was hardship. They felt that it was a hardship that his client had bought the property from the City, believing it would be a commercially reasonable lot for a commercially reasonable use. Mr. Parrott again noted that the criteria needed to be addressed and Mr. Grasso asked if the applicants wanted to postpone the hearing. Ms. Rousseau suggested that the Board could give them the criteria, which she proceeded to do, indicating the individual points and noting that they needed to tell the Board why they were met.

Mr. McInnis stated that granting the petition would not be contrary to the public interest. This was a very clean operation which was permitted by special exception and there were many like businesses around this location. He stated that the property had been a City owned fire station. His client had paid for a commercially reasonable property and it would be in the spirit of the Ordinance to grant this. Mr. McInnis stated that justice would be served by bringing another taxpayer into town who would also keep the property clean. Regarding the value of surrounding properties, he stated that, if anything, they would be improved. The property was currently vacant and having it occupied would help values. He stated that the special conditions of the lot were that it was a nonconforming lot but again the client took a risk in buying this from the City believing it could be used in a commercially reasonable manner.

Mr. Parrott noted that the variance criteria were covered and asked him to move onto the special exception. Mr. McInnis introduced Mr. Wallace who would be able to explain his business.

Mr. Wallace stated that they had begun in 1991 and had a number of shops which had done a lot for their communities, with special events and donations to community groups.

When Mr. Parrott asked him to address the standards for the special exception, Mr. Wallace stated that there would be nothing hazardous in the operation and no oil changes. All there would be was

scrap metal which they would dispose of at a scrap yard. Mr. McInnis stated that this would be a clean operation which would not be a detriment to property values. There would be no creation of a traffic safety hazard or increase in the level of traffic. There was a very safe entrance and exit. He asked Mr. Wallace how many cars would be handled in a day and Mr. Wallace replied that there would be 8 or 10. Regarding the demand for municipal services, Mr. McInnis referred to the restaurant going in next door and noted that they would use less water than the former fire station. No additional protection was needed or demand on schools. He stated that, regarding storm water runoff, there would be no cleaning of cars, just auto repair. When Mr. Parrott asked if any modifications were planned to the exterior of the building, Mr. Wallace stated there would be no expansion, only cleaning and painting.

Ms. Rousseau stated that with the hardship criteria, the property could not reasonably be used in strict conformance with the Ordinance. She asked the applicants if it was correct that this was because of the unique characteristics of their property. She noted that the building had several bays and asked if they would agree that it seemed to be only used for a business similar to that of the applicant rather than a traditional retail business. Mr. McInnis agreed, noting that he had shown over 20 automotive users through the building. Ms. Rousseau commented that that was all who wanted to look at the place. Mr. McInnis stated that the four bays on the property had attracted Mr. Wallace but he was the only qualified business that they had found for the property. When Ms. Rousseau commented that the property was a very unique site and asked if that was their hardship, Mr. McInnis agreed. When Ms. Rousseau asked if that would be because the property was not set up for traditional retail but was set up for automobiles or fire trucks, Mr. McInnis stated that was correct. He also agreed when Ms. Rousseau asked if those were the only customers that were looking at that space. Ms. Rousseau asked if it was correct that they would have to be there one way or the other with an automotive type use and Mr. McInnis responded that he would agree. He also agreed when Ms. Rousseau asked if this was because of the special characteristics of that property.

DECISION OF THE BOARD

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

Addressing the special exception criteria, Ms. Rousseau stated that there would be no hazard to the public or adjacent properties on account of fire explosion or release of toxic materials. She noted that both presenters had stated that there would be no toxic materials. She stated that this operation would be limited to repairs so there would be no issues for the general public. Ms. Rousseau stated that there would be no detriment to property values. One of the speakers was a real estate broker who had said that values would be enhanced and it certainly would not help property values to have a vacant building. She felt having a business there would be representative of a vibrant community. She stated that there would be no creation of a traffic safety hazard. Noting that the tenant had represented no more than around 10 people would be in and out daily, she could not envision any traffic congestion. Ms. Rousseau stated that there would be no excessive demand on municipal services as the business would be in line with other retail or business uses on the street. There would be no issues with storm water runoff as the structure was fairly isolated from other structures.

Regarding the variance criteria, Ms. Rousseau stated that granting the variance would not be contrary to the public interest in any way. This business fell in line with the other types of businesses in the area so that there would be no change to the essential characteristics of the neighborhood or threat to the public health, safety or welfare. For that reason, granting the variance would also be in the spirit of the Ordinance. She stated that substantial justice would be done for this applicant by allowing the use to move forward without harming the rights of individuals or the general public. She noted that they had already discussed no harm to property values. If anything, she stated, property values would be enhanced. Regarding the hardship test, Ms. Rousseau stated that this was a unique structure which could not be used in strict conformance with the Ordinance. There were two bays there so that it was set up for some sort of automotive business, which would generate tax revenue for the City. She stated that it should be allowed to go forward.

Mr. Durbin stated that he agreed with most of what Ms. Rousseau stated. It was hard to believe that this wasn't already a use allowed on this lot. He felt that the structure being set up for a particular use limited the number of other possible uses without having to modify the structure, which would be difficult in this economy.

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

V. OTHER BUSINESS

No other business was presented.

VI. ADJOURNMENT

It was moved, seconded and passed by unanimous voice vote to adjourn the meeting at 8:25 p.m.

Respectfully submitted,

Mary E. Koepenick
Administrative Clerk