

AMENDMENT TO:

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

MUNICIPAL COMPLEX, 1 JUNKINS AVENUE

EILEEN DONDERO FOLEY COUNCIL CHAMBERS

7:00 p.m.

October 18, 2011

MEMBERS PRESENT: Chairman David Witham, Vice-Chairman Arthur Parrott, Derek Durbin, Thomas Grasso, Alain Jousse, Charles LeMay (late arrival) and Alternate: Patrick Moretti

EXCUSED: Susan Chamberlin, Alternate: Robin Rousseau

The following Amendments are made to the Minutes of the October 18, 2011 Meeting of the Board of Adjustment, as approved at the December 13, 2011 Meeting of the Board of Adjustment: (Corrections are bolded and in italics)

- 1) Substitute attached Page 6 for Page 6 in approved document.**
- 2) Substitute attached Page 18 for Page 18 in approved document.**

Chairman Witham noted that, while one of the speakers had stated that the sign was too low, it was not before the Board for a height variance, but was for the total projection of the sign and the distance from the building. He added, with regard to the snow and ice accumulation, that they would need scientific evidence to confirm the difference between 3½” versus 6”.

Mr. Grasso asked if they could approve a smaller sign, although he didn’t want to be in the position of designing it. Chairman Witham noted that they could always grant less, but he felt in this situation they would be better with a yes or no.

Mr. Grasso made a motion to deny the variance, which was seconded by Mr. Parrott.

Mr. Grasso stated that the applicant had to meet all the criteria to grant a variance and he had trouble with the hardship. He agreed that they should have identification, but felt the proposed size was large and could be smaller. He stated that the first requirement was that the variance would not be contrary to the public interest or health, safety and welfare and noted that the comments of one of the speakers would fall under that so he felt the request failed to meet two of the criteria.

Mr. Parrott agreed, stating that something smaller would be more appropriate. As the applicant had pointed out, there were no competing signs so a sign for this unit would not get lost, especially on a smaller street with mainly foot traffic. He felt that they should encourage applicants to comply as closely as they could with the Ordinance.

Chairman Witham stated that he would not support the motion and felt that the application met the criteria. He felt that the basis was the width of the sidewalk which varied greatly. Given the existing bracket and scale of the sign, he felt the petition should be granted. Looking at the photograph with the flags and awnings, he didn’t feel the sign would otherwise be visible.

The motion to deny the petition as presented and advertised was passed by a vote of 4-2 with Messrs. Durbin and Witham voting against the motion.

Mr. LeMay arrived and assumed his seat. *Mr. Jousse stepped down for the following petition.* Mr. Moretti remained in a voting seat.

- 3) Case # 10-3
 - Petitioner: 150 Greenleaf Avenue Realty, James G. Boyle, Trustee
 - Property: 150 Greenleaf Avenue Assessor Map 243, Lot 67
 - Zoning district: Gateway
 - Requests: Appeal the Administrative Decision of the Legal Department to issue a cease and desist order based on its interpretation of Sections 10.1016, 10.1017, and 10.1018 of the Zoning Ordinance.

SPEAKING IN FAVOR OF THE PETITION

create or encourage safety hazards as were there by preventing maintenance. The attorney stated that Mr. Boyle was simply doing work to address unsafe conditions and that all he was doing was maintenance to rectify an unsafe condition. Chairman Witham stated that he hadn't heard anything to give him an understanding of what those unsafe conditions were. He stated that he felt, from what he had seen through the pictures and statements, along with the fact that those culverts were installed, that this was way above and beyond maintenance. He listed the words, "dredge, fill in, movement of earth, excavation," noting that he was certain they could find a way, as the attorney had, to put those in the category of maintenance but it didn't work for him. Chairman Witham stated that he felt those were much more than maintenance and would require permitting.

The motion to deny the petition was passed by a unanimous vote *of 6-0*.

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- 4) Case # 10-4
 Petitioner: 200 International LP, Owner, 180 International LLC, Applicant
 Property: 180 International Drive Assessor Map 312 Lot 3
 Zoning district: Pease Industrial
 Description: Parking spaces located in the front of an existing building.
 Requests: Variance from Section 305.02(b) of the Pease Development Authority Zoning Ordinance to allow parking 49' from the front property line where 50' is the minimum required.

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernard Pelech stated that he was representing the applicant and passed out some material.

Chairman Witham noted that, when it was time to make a motion, they would be making a recommendation to the Pease Development Authority and all the criteria did not need to be addressed.

Attorney Pelech agreed that the Board simply need to make a recommendation, noting that the Pease Development Authority Ordinance did not have a provision for somebody applying for an Equitable Waiver because the Ordinance was developed before that state law came into effect. He stated that, when the parking lot at 180 International Drive was constructed, there was a good faith error in that, of the 300 odd parking spaces, there were 5 of them varying from 1" of encroachment into the 50' setback to as much as 2.5'. It was just this much distance on a 23 acre parcel of land.

Attorney Pelech stated that this was a large property with the special conditions arising from the facts he had just mentioned, with five spaces encroaching. This was coupled with the fact that the encroachment was minimal so there was no fair and substantial relationship between the 50' setback of the PDA and its application to this property. He stated that the spaces were actually 70' to 79' from the edge of pavement. He stated that the value of surrounding properties would not be diminished by making this recommendation as what had been there for years would still be there. He stated that the hardship on the owner, if the recommendation were denied, would not be