

**MINUTES OF THE BOARD OF ADJUSTMENT MEETING
PORTSMOUTH, NEW HAMPSHIRE
CITY COUNCIL CHAMBERS**

7:00 P.M.

November 16, 2004

MEMBERS PRESENT: Chairman Charles LeBlanc; Vice-Chairman James Horrigan; Nate Holloway, Alain Jousse, Bob Marchewka, David Witham, Alternate Steven Berg, Alternate Duncan MacCallum

MEMBERS EXCUSED: Arthur Parrott

ALSO PRESENT: Lucy Tillman, Planner

I. OLD BUSINESS

- A)** Petition of **Eric Weinrieb, owner**, for property located at **1 Jackson Hill Street** wherein the following are requested for the construction of a 28' x 32' two story single family dwelling: 1) Variance from Article III, Section 10-301(A)(2) to allow a freestanding second dwelling on the lot in a district where all dwelling units are required to be in one building, and 2) Variance from Article III, Section 10-302(A) to allow said building to have: a) a 14'± rear yard where 20' is the minimum required, and b) to have two dwelling units on a 11,650 sf lot where 15,000 sf would be required. Said property is shown on Assessor Plan 141 as Lot 30-2 and lies within the General Residence A and Historic A districts. Case # 10-4

Chairman LeBlanc stated that the petition had been withdrawn and asked for a motion to table the petition to a time indefinite.

A motion was made and seconded to table the petition to a time indefinite and the motion passed via a unanimous vote of 7-0.

- B)** Request for a one-year extension of time for **Michael Clark, owner**, of property located at **325 Little Harbor Road**. A Special Exception was granted on January 20, 2004. Said land is shown on Assessor Plan 205 as Lot 2 and lies within a Rural District.

Chairman LeBlanc stated that he had some correspondence from Attorney Bernard Pelech.

Mr. Horrigan asked if there was a reason why the petition was looking for an extension.

Chairman LeBlanc asked Attorney Pelech the question.

Attorney Pelech answered that there were delays in getting some of the components of the barn.

Mr. David Holden stated that it is in the Board of Adjustment's regulations to grant an extension for one year, it should be automatic.

Mr. Holloway made a motion to grant the extension for one year.

Mr. Witham seconded.

The Chairman called for the vote to grant the extension and the motion passed via a unanimous vote of 7-0.

II. PUBLIC HEARINGS

- 1) Petition of **Bruce D. Campbell, owner** for property located at **245-249 Lincoln Avenue** wherein the following Variances are requested from Article IV, Section 10-401(A)(2)(c) and Section 10-402(B) to allow: a) a 6' x 12' 2nd story deck and stairs on the left side of the garage with an 8'± rear yard where 11.25' is the minimum required as a result of raising the roof to 15' at the midpoint and adding a dormer, and b) 48.9±% building coverage where 25% is the maximum allowed. Said property is shown on Assessor Plan 130 as Lot 46 and lies within the General Residence A district. Case # 11-1

SPEAKING IN FAVOR OF THE PETITION

Bruce Campbell, owner of the property, spoke on behalf of the petition. He passed out some additional photos of the property to the Board. He stated that the garage to the property needed a new roof. It was a four-sided hip roof and he wanted to put a gable roof in its place which would raise the height requiring him to obtain a variance. In addition to the roof, he wanted to add a deck.

Mr. Jousse asked if he had considered a set of internal stairs.

Mr. Campbell stated he had but it took away from the space in the garage.

Mr. Jousse was concerned that the applicant would put a bedroom above the garage.

Mr. Campbell answered absolutely not, he just wanted storage.

Mr. Jousse asked how much head room there would be between the peak and the floor of the storage area above the garage.

Mr. Campbell said approximately 13 feet.

Mr. Horrigan asked how long the existing garage was.

Mr. Campbell answered 27 x 25.

Mr. Holloway asked if there was any existing plumbing in the garage.

Mr. Campbell answered no.

Mr. Parrott asked what the age of the garage was.

Mr. Campbell said it was built in the 50's.

Mr. Parrott reiterated that it wouldn't fall down.

Mr. Campbell said no.

Mr. Parrott asked if there was any documentation from his meeting with the structural engineer.

Mr. Campbell said no, just a bill.

Chairman LeBlanc asked if there were any further questions from the Board.

Chairman LeBlanc asked if there was anyone who wished to speak to, for or against the petition.

Paul Lincoln?, an abutter to the property, supported the petition.

Chairman LeBlanc asked if there wan anyone else who wished to speak to, for or against the petition.

Seeing no one rise, the Chairman declared the public hearing closed.

DECISION OF THE BOARD

Mr. Witham made a motion to deny the request as presented and advertised.

Mr. Jousse seconded.

Mr. Witham stated he was not challenging the condition of the structure or the need to replace it. He thought the plan was over ambitious. He thought the proposed deck for access to the attic was much more than just a landing and he did not think it was needed. In addition, he felt that its proximity to the neighbor's yards was too close. He did not think it was reasonable for the small area they were requesting the variance for as well as the fact that it did not satisfy the Boccia standard.

Mr. Jousse agreed with Mr. Witham.

Mr. Horrigan agreed that the roof was in bad shape and thought it would be an improvement to the property but he did not feel that there was any evidence that an internal staircase could not be used.

Chairman LeBlanc called for the vote to deny the petition as presented and advertised and the motion passed via a unanimous vote of 7-0.

- 2) Petition of **Robert McDowell, owner**, for property located at **379 Newcastle Avenue** wherein a Variance from Article IV, Section 10-402(B) is requested to allow a 10'8" x 16' one story garage with an 8'± front yard where 30' is the minimum required. Said property is shown on Assessor Plan 207 as Lot 4 and lies within the Single Residence B and Historic A districts. Case # 11-2

SPEAKING IN FAVOR OF THE PETITION

Robert McDowell, owner of the property, spoke in favor of the petition. He stated that there was some confusion as to where the property line was. He measured according to the City's tax map, which was 100 feet from the water to the road, and he got 168 feet. The garage proposed would be replacing the other garage that was in the exact same location many years ago. He presented pictures to the Board. He stated that other neighbors in the south end have garages built that do not conform to the ordinance regulations for setbacks. He positioned it in the most appropriate place and brought abutters with him to voice their support of the same.

Chairman LeBlanc asked if he already constructed it with a building permit.

Mr. McDowell answered yes.

Chairman LeBlanc asked if he had any problem with that originally.

Mr. McDowell said he had mismeasured but it is in the most appropriate place.

Mr. Holloway asked if he had a surveyor come and survey the lot.

Mr. McDowell answered that he did it himself.

Mr. Witham asked why he placed where he did.

Mr. McDowell said he set it on an existing paved parking area, which was the most practical area to place it. He wanted to know why thirty feet was chosen; he did not think it made much sense.

Chairman LeBlanc asked how wide the road was in front of his house.

Mr. McDowell answered from the white line to the center of the road was about 14 feet so about 28 feet total.

Chairman LeBlanc stated that the ordinance has a definition of a front yard and quoted, "front yards dimensions are to be measured from the street where a plan of the street is on file with the Rockingham County Registry of Deeds or the City records. From the absence of such plan, the line from 25 feet and parallel from the center of the traveled way." The property line would be 25 feet from the center of the road.

Mr. McDowell said ok.

Chairman LeBlanc stated that would put it into the right of way.

Mr. McDowell said he didn't understand how other properties within the south end did not meet that requirement and why they got approved.

Mr. Witham stated that they are not supposed to rely on a tax map, but a site plan.

Mr. David Holden stated that this was the first time he had heard that there was a discrepancy with the tax map and they were trying to figure out the best way to address the issue of the property lines. He suggested that they table the petition so that they could straighten out the issue of the property lines and make a decision from there.

Ms. Tillman stated that the applicant had a building permit for a 12 x 17 foot building, 30 feet from the front property line, which could be built today.

Mr. McDowell said that wouldn't work because it would eat up all of his space on the remainder of his lot and put the garage right up to his rear door. He reiterated that he did not see what the major problem was with granting his variance request as many others on his street in his neighborhood did not meet the requirements that the Board was making him adhere to.

Mr. Marchewka asked if the right of way was thirty feet back or less than thirty feet back.

Chairman LeBlanc stated it would be 25 feet from the center of the road.

Mr. Parrott stated that there was a huge discrepancy in the depth of the lot and he couldn't imagine how they would be able to make an intelligent decision with one side saying the lot is 100 and another saying the lot is 168. He thought a proper survey needed to be done and the distance between the back of the garage and the road was a huge safety concern so regardless of where the front property line would be, he felt it would not be a good decision to grant a variance. Essentially, he felt they needed more accurate, definite information to act on.

Mr. Marchewka asked if there was any room for movement to push the garage back further.

Mr. McDowell stated it is set in the optimum locale.

Mr. Marchewka stated there was a fair amount of space on the lot since that there was 24 feet between the deck and the garage. He felt it could be moved closer to the house.

Mr. Horrigan was concerned with the location since it was pointing directly at Pleasant Point Drive. He felt that it created a unique set of circumstances. He agreed with Mr. Marchewka and did not feel that there was a hardship involved.

Mr. McDowell stated that this did not make sense, especially to someone who just moved to the area.

Mr. Horrigan asked if it was anchored into foundation.

Mr. McDowell answered yes, it was anchored in with 12 or 13 inch bolts or rods.

Chairman LeBlanc asked if there was any further questions by the Board.

Hearing none, the Chairman asked if there was anyone else who wished to speak to, for or against the petition.

Valerie Woods? spoke in favor of the petition. She stated that Mr. McDowell moved into the house that she grew-up in and said that he was a great neighbor and had done a lot of improvements to the home. She informed the Board that there used to be a fence which depicted the property lines and when that was taken down, her mother planted trees in its place to keep the definition of her property.

Chairman LeBlanc asked which side of the house she lived on, the left or the right.

Ms. Woods answered left.

Chairman LeBlanc asked if there was anyone else who wished to speak to, for or against the petition.

Charles Vaughn of 50 Pleasant Point Drive spoke in opposition to the petition. He stated that the issue of traffic safety came up when Mrs. Alvin Taylor got in an accident coming out of Pleasant Point onto Newcastle Avenue. He said it is a hazardous area because cars park on the right as you come out of Pleasant Point Drive and often times a person would have to make a sharp left turn going over towards the garage which protrudes out into the traffic lane. He thought that was a huge issue and noted that there would be construction taking place on Newcastle Avenue.

Chairman LeBlanc noted there was a letter submitted from Robert Andleman of 3 Boyan Place. In the letter, he pointed out that the garage was located very close to the street. He sympathized with the

applicant but offered a compromise that the applicant move the presently constructed garage back towards the house.

Chairman LeBlanc asked if there was anyone else who wished to speak to, for or against.

Seeing no rise, the Chair declared the public hearing closed.

DECISION OF THE BOARD

Mr. Witham made a motion to deny the petition as presented and advertised.

Mr. Holloway seconded.

Mr. Witham stated that safety outweighed practicality. He remarked that he was not denying the applicant of something that everyone else has but that he has criteria that he has to base his decision on. He went over the criteria and explained how the applicant had not met the same. He felt that there were ways it could be addressed without the way it was presented. He thought there was plenty of space on the lot and the garage could be placed in a better location.

Mr. Holloway concurred with Mr. Witham's reasoning.

Mr. Marchewka stated he agreed with Mr. Witham and he thought the garage could be built further away from the street. He did not think that they had the right to grant the variance based on the analysis that the Board has to use. He thought it was a huge safety issue due to the location and he felt that they needed to be careful.

Chairman LeBlanc called for the vote to deny the variance request and the motion passed via a unanimous vote of 7-0.

- 3) Petition of **Patricia A. Horvath, owner**, for property located at **69 Middle Road** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) are requested to allow an 8' x 8' deck with 3' x 7' stairs creating 20.9% building coverage where 20% is the maximum allowed. Said property is shown on Assessor Plan 152 as Lot 10 and lies within the Single Residence B district. Case # 11-3

SPEAKING IN FAVOR OF THE PETITION

Patricia Horvath, owner of the property, spoke on behalf of the petition. She stated that they would like to reestablish an 8 x 8 deck that was there previously. She stated that it was all within the setbacks and that the variance was needed for the increase in lot coverage.

Chairman LeBlanc asked if it was in the back corner near the new addition being constructed.

Ms. Horvath stated it is in the same location as it was before and around the corner of the addition.

Mr. Jousse asked how high the deck was from the ground.

Ms. Horvath said about 8 feet.

Mr. Jousse asked if the land sloped.

Ms. Horvath said yes.

Mr. Horrigan stated that it looked like it was a steep slope.

Ms. Horvath said that at the end of the property the slope is pretty steep.

Mr. Witham asked why they removed it in the first place.

Ms. Horvath stated they removed the deck when they decided to build the addition so that they would not need to seek a variance.

Mr. Jousse asked if they could make it smaller to reduce the lot coverage.

Ms. Horvath said it wouldn't be practical because it wouldn't give them the space they need to put a table and a grill out there.

Chairman LeBlanc asked if there was anyone else who wished to speak to, for or against.

Seeing no one rise, the Chair declared the public hearing closed.

DECISION OF THE BOARD

Mr. Jousse made a motion to grant the variance as presented and advertised.

Mr. Parrott seconded.

Mr. Jousse thought it was a minimal request eventhough the deck could be built smaller, he thought 8 x 8 was a reasonable size to accomplish what the applicant was trying to do. He went over the criteria necessary to obtain a variance and explained how he felt the applicant had satisfied the same.

Mr. Parrott thought it was grantable from a common sense standpoint and the request was very minimal. He concurred with Mr. Jousse's reasoning.

Chairman LeBlanc called for the vote and the motion passed via a unanimous vote of 7-0.

- 4) Petition of **Brian D'Amour and Justine Whitney, owners**, for property located at **107 Pearson Street** wherein a Variance from Article III, Section 10-302(A) is requested to allow a 20' x 26' one story addition with a 20' front yard where 30' is the minimum required. Said property is shown on Assessor Plan 232 as Lot 101 and lies within the Single Residence B district. Case # 11-4

Let the record reflect that Mr. Jousse recused himself and Mr. Berg would be sitting in his place.

SPEAKING IN FAVOR OF THE PETITION

Justine D'Amour spoke on behalf of the petition. She stated that they would like to construct a one-story addition so that her parents would be able to stay with them. She pointed out that the location for the addition was the only reasonable place for it to be constructed.

Chairman LeBlanc asked if there was anyone who wished to speak to, for or against the petition.

Seeing no one rise, the Chair declared the public hearing closed.

DECISION OF THE BOARD

Mr. Horrigan moved to grant the petition as presented and advertised.

Mr. Witham seconded.

Mr. Horrigan stated the criteria necessary to obtain a variance and explained how the applicant satisfied the same. He felt that due to the conditions of the land (i.e. slope) it was the most proper location and size for the house and thought it was a reasonable request.

Chairman LeBlanc suggested adding the stipulation that the home remains a single family home.

Mr. Horrigan agreed and was not opposed to adding the stipulation to his motion.

Mr. Witham concurred with Mr. Horrigan's reasoning.

Chairman LeBlanc added that the street was very narrow and that there weren't any traffic or safety issues to be concerned with.

Chairman LeBlanc called for the vote to grant as presented and advertised with the aforementioned stipulation and the motion passed via a unanimous vote of 7-0.

- 5) Petition of **Wal-Mart Estate Business Trust, David Glass Managing Trustee, owner**, for property located at **2460 Lafayette Road** wherein a Variance from Article XII, Section 10-1203(A)(2) is requested to allow 12 loading areas to be provided where 19 are required. Said property is shown on Assessor Plan 285 as Lots 16-1 and 16-2 (to be combined) and lie within the General Business district. Case # 11-5

Let the record reflect that Mr. Berg recused himself as Mr. Jousse sat in.

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernard Pelech spoke on behalf of the applicant and the petition. He reiterated that they were before the Board back in September for a similar request but the architectural plans had changed in that there was 5,000 sq. feet of additional square footage of the building in the footprint which put them in a situation where 19 loading berths would be required. They were requesting 12 instead of the 19 that are required. He pointed out the plan that depicted the proposed 12 loading areas. He stated 12 were more than enough to accommodate their needs and noted that presently, they only have 3 loading berths. He asked the Board for some sort of direction as to what standard he should address to show they meet the 5 criteria (i.e. *Boccia* or *Simplex*). He stated that he was prepared to address either standard but that it was neither a dimensional nor an area variance that his client was requesting.

Chairman LeBlanc stated it was in Attorney Pelech's best interest to make the choice and address the Board accordingly.

Attorney Pelech stated that his client needed an area variance to enable them to use the property given the special conditions of the property. He addressed the *Boccia* standard and explained how they satisfied the

same. He reiterated that the intent of the ordinance was to a lot for adequate room for the loading and unloading of goods. He stated that everything is consolidated and coordinated so the need for loading berths is not as strict. He did not see the need for extra loading berths as required if they would not be needed and not used. He stated that if the variance was granted it would ensure an adequate number of parking spaces would remain on the site and if the variance was not granted, it would eliminate parking spaces. He urged the Board to grant their request.

Chairman LeBlanc asked about the loading berths whether the trucks would unload onto the grade and not have any docks.

Attorney Pelech answered yes, they were loading areas permitted by the ordinance, which did not require docks.

Chairman LeBlanc asked if the facility would only receive trucks from Wal-Mart.

Attorney Pelech said yes.

Mr. Horrigan asked which type of variance they were seeking.

Attorney Pelech answered that it really wasn't a dimensional variance or a use variance so he believed it to be an area variance, however, he was not positive, so that was why he addressed the Boccia standard since it was loading berths that they were discussing.

Mr. Horrigan agreed. He asked if any loading areas would be on the side or the front.

Attorney Pelech answered that it not allowed via the ordinance.

Mr. Horrigan asked about the truck turn around area and if it was adequate.

Attorney Pelech answered yes, that Wal-Mart has had a lot of success with that feature since it guarantees the turning for the tractor trailer trucks to maneuver in and out of the loading areas.

Mr. Parrott asked Attorney Pelech what was the exact basis for the number 12 they were requesting.

Attorney Pelech explained the reason for the 12 loading berths was because of the space they have. The last time they were before the Board they had requested 7 and that was not adequate, so when he met with Ms. Tillman, she recommended that they show as many as they could and as a result, they added the additional 6 berths as depicted on the plan.

Mr. Marchewka asked about the parking areas and if they were just for overflow.

Attorney Pelech said they were for the tractor trailer trucks.

Mr. Marchewka asked why they couldn't park in the parking lot.

Chairman LeBlanc stated it was because those spaces were for the customers.

Mr. Marchewka asked if there was a required number of spaces.

Attorney Pelech stated that they have more spaces than what was required.

Mr. Marchewka thought there was plenty of parking on the site.

Chairman LeBlanc said that the ordinance calls for the loading areas.

Chairman LeBlanc asked Attorney Pelech if the temporary storage areas would go away as soon as the new building is put in place.

Attorney Pelech answered yes.

Chairman LeBlanc asked if there was anyone in the public who wished to speak to, for or against the petition.

Attorney Sharon Somers on behalf of Lafayette Plaza, LLC and spoke in opposition to the petition. She read aloud a letter to the Board from Lafayette Plaza, LLC voicing their opposition to the request. She reiterated why they were before the Board again since they had been before the Board on a similar request back in September. She explained how they did not satisfy the criteria set forth in Boccia and there was no hardship demonstrated. She felt there was adequate space to have all of the loading berths that are required regardless of whether all are used or not.

Chairman LeBlanc asked if there was anyone else who wished to speak to, for or against the petition.

Mr. Witham noted the strong argument made by Attorney Somers but asked her to reiterate the impacts the request would have on her client.

Attorney Somers stated should the variance be granted they felt there was a potential for inadequate designated spaces and therefore, truck traffic could impact Constitution Avenue resulting in a negative impact on Lafayette Plaza, LLC when they make their deliveries. Additionally, she remarked that she had heard nothing that demonstrated there was not sufficient area on the Wal-Mart lot to accommodate for all of the required loading areas and parking spaces as set forth in the ordinance. She thought the request for the variance was for mere convenience and not necessity.

Chairman LeBlanc asked if there were any further questions from the Board.

Mr. Horrigan asked if Constitution Avenue was the only entrance used by Attorney Somers' client as well as Attorney Pelech's.

Attorney Somers stated it was not the only access point but it was the route for delivery trucks. She said given the proximity of the Wal-Mart location to the back streets, if there was a problem on the Wal-Mart site in terms of not having enough loading area, the trucks would have to go somewhere in the interim and most likely end up waiting on Constitution Avenue which could result in a negative impact on their loading process.

Mr. Jousse asked if there was a dimensional requirement for the loading areas.

Ms. Tillman answered yes, Article 12, Section 10-1202, chart on page 10, the first was 12 x 20 and others after that were 12 x 45.

Mr. Horrigan asked if that meant they would give up essentially two and a half to three automobile parking spaces each loading berth.

Ms. Tillman agreed.

Chairman LeBlanc asked if there was anyone else who wished to speak to, for or against the petition.

Attorney Pelech stated he felt what had been submitted was a well-designed plan and noted that trucks are banned from Banfield Road. He reiterated that it was not reasonably feasible to cut out three or four parking spaces for each loading area.

Chairman LeBlanc asked if there was anyone else who wished to speak to, for or against the petition.

Seeing no one rise, the Chair declared the public hearing closed.

DECISION OF THE BOARD

Mr. Parrott made a motion that the variance be denied.

Mr. Marchewka seconded.

Mr. Parrott was concerned that there was no firm basis for the number 12 since there was no distinction of "retail" in the ordinance. He did not feel that the criteria had been met to enable the applicant to obtain the variance. He thought the applicant could comply with the ordinance and therefore, he would deny their request.

Mr. Marchewka stated that it was a very large site and from looking at the *Boccia* analysis, he thought the benefit sought by the applicant could be achieved by some other method. He stated that all Wal-Mart had to do was restripe the lot and provide an area for the trucks to park.

Mr. Witham would not support the motion as he felt that 12 loading berths were sufficient for the site. He thought the applicant did satisfy the *Boccia* standard. He did not think it was reasonably feasible to ask them to reengineer everything that existed in the rear of the building.

Mr. Marchewka thought there was plenty of room at the rear of the building.

Mr. Horrigan was concerned that the parking would be mixed between the customers and the delivery trucks. He remained unconvinced that 19 was the optimum number. He wanted more clarification and asked if they were to deny the request before the Board, if the seven approved loading berths would still stand.

Ms. Tillman stated that was correct. She further stated that the reason for the 19 was due to the increased square footage of the building. If they were denied, the seven previously approved loading berths would stand and the building would have to be reduced to the original square footage.

Chairman LeBlanc called for the vote on the motion to deny and the motion failed via a vote of 5-2 with Mr. Parrott and Mr. Marchewka voting in the opposition.

Mr. Witham moved to grant the petition as presented and advertised.

Mr. Holloway seconded.

Mr. Witham stated the same reasons that he stated previously when the motion to deny was on the table.

Mr. Holloway concurred with Mr. Witham's reasoning.

Chairman LeBlanc asked Mr. Witham if he would be willing to accept two stipulations to be added to the motion to grant the petition. The first stipulation would be that the temporary storage be removed when the construction was completed and the second, that the previous variance granted for the seven spaces be rescinded.

Mr. Witham said yes.

Mr. Holloway wanted to add the stipulation that only vehicles delivering to Wal-Mart be allowed to park on the property.

Chairman LeBlanc called for the vote on the motion to grant as presented and advertised with the aforementioned three stipulations and the motion passed via a vote of 5-2 with Mr. Parrott and Mr. Marchewka voting in the opposition.

- 6) Petition of **Jeffrey F. and Deborah S. Purtell, owners**, for property located at **31 Pleasant Point Drive** wherein a Variance from Article III, Section 10-302(A) is requested to allow: a) a 26' x 60' two story single family dwelling on an existing foundation after the removal of all of or portions of the existing single family dwelling with a 25.3'± front yard where 30' is the minimum required and a right side yard less than 10' where 10' is the minimum required, b) and attached 326 sf front porch with a 6.1± right side yard where 10' is the minimum required, c) a 12' x 16' addition replacing existing porch with an 11.5'± rear yard where 30' is the minimum required; and, d) a 24' x 26' garage and connector (720 sf) with living space above creating 23.7% building coverage where 20% is the maximum allowed. Said property is shown on Assessor Plan 207 as Lot 27 and lies within the Single Residence B district. Case # 11-6

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernard Pelech spoke on behalf of the owners and the petition. He noted that Boyan Place from the edge of the pavement was almost 20 feet off the property line and passed out pictures depicting the same. The home currently is a single story home and they would like to take it down to the foundation and create a two-story home with a two-car garage addition. He noted the only thing that did not comply with the setbacks would be 6' 1" of the proposed porch. The foundation is located at an angle and three corners of the building do not comply with the setbacks. He cited the *Boccia* standard and explained how they satisfied the same. He read aloud letters from all of the abutters to the subject property (with the exception of one being in Florida) to the Board voicing their support for the proposed. He thought it was an enhancement to the house and its neighborhood and urged the Board to grant the variance request.

Chairman LeBlanc asked about the white pegs in the pictures on the front and the rear of the property whether those were the rebar they found on the plan.

Attorney Pelech answered yes.

Mr. Horrigan asked why the original footprint was driving the proposal.

Attorney Pelech answered that there was a good, solid existing foundation on the property and some financial restrictments that made it easier for the applicant to work with the existing foundation.

Mr. Horrigan asked what the rationale was for the rounding out of the front porch.

Attorney Pelech answered that the porch was very narrow and the owners wanted to be able to put a table and/or chairs on the porch.

Chairman LeBlanc asked if there was anyone who wished to speak to, for or against the petition.

Mr. Robert McDowell spoke on the petition and made some comments about the proposal and tried to relate it to his property and request for a variance to allow for the construction of his garage.

Chairman LeBlanc asked if there was anyone else who wished to speak to, for or against the petition.

Mr. Jousse asked the architect on the project if the present structure was structurally sound enough to support a second story.

The architect replied that in most cases it was.

Mr. Berg asked how much of the foundation could be removed in order to make it conforming.

Ms. Tillman answered that she was not aware of how much they would be removing and that was why she worded the request as she did.

Attorney Pelech noted that he had indicated that they would be removing everything down to the foundation and that was the best way of addressing the non-conforming issue.

Charlie Vaughn of 50 Pleasant Point Drive spoke in favor of the petition. He stated that he has lived in Portsmouth since the 50's and that was the time when his house amongst the others in his neighborhood were constructed which all predate the ordinance. He said that when those houses were built there were no such things as setbacks and frontages so the houses were built the way they wanted them to be built. He said that the two-story addition would be no larger than the other houses in the neighborhood that were granted permission to construct their additions and urged the Board to grant the variance to allow the applicant to construct his.

Chairman LeBlanc asked if there was anyone else who wished to speak to, for or against the petition.

Seeing no one rise, the Chair declared the public hearing closed.

DECISION OF THE BOARD

Mr. Witham made a motion to grant as presented and advertised.

Mr. Horrigan seconded.

Mr. Witham thought the plan was tastefully designed and that the applicant did their best to minimize encroachment and be mindful of the setbacks. He felt that the house would fit in well with the site and explained why he felt the applicant and his request satisfied the criteria necessary to obtain a variance.

Mr. Horrigan concurred with Mr. Witham's reasoning. He stated additionally that it appeared as if the applicant was getting a lot of relief, but it was not and he thought that it would be beneficial to the neighbors as well as the applicant. He thought there were a lot of reasons to grant the variance.

Mr. Marchewka asked to stipulate that the porch remains open.

Mr. Witham stated that the porch not be enclosed in any more than screens.

Mr. Parrott felt that the applicant could feasibly add-on to the existing house and therefore did not satisfy the prong of the test of *Boccia* "the benefit sought by the applicant can not be achieved by some other method reasonably feasible for the applicant to pursue other than an area variance." He thought that people need to try to comply with the ordinances as they are written today and in this particular case, he believed that it was feasible and practical to comply with the ordinance.

Mr. Jousse stated he would not be supporting the motion. He agreed with Mr. Parrott's remarks and thought the goal to gain living space could be achieved by some other means working with the existing building.

Mr. Parrott stated that the building could be replaced or modified within the setbacks contained set forth in the zoning ordinance.

Mr. Witham noted the only expansion that went outside of the building envelope was the small section of the open porch and he did not see that as being an abuse to the building envelope.

Chairman LeBlanc asked if there any further questions or comments by the Board.

Hearing none, the Chair called for the vote on the motion to grant the petition as presented and advertised with the aforementioned stipulation and the motion passed via a vote of 4-3 with Mr. Parrott, Mr. Holloway and Mr. Jousse voting in the opposition.

III. ADJOURNMENT

At 10:31 PM, a motion was made and seconded to adjourn to the following months meeting.

Sincerely,

Christina V. Staples
Acting Secretary