

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

MUNICIPAL COMPLEX, 1 JUNKINS AVENUE

EILEEN DONDERO FOLEY COUNCIL CHAMBERS

7:00 p.m.

May 18, 2010

MEMBERS PRESENT: Chairman Charles LeBlanc, Vice Chairman David Witham, Thomas Grasso, Alain Jousse, Charles LeMay, Arthur Parrott, Alternates: Derek Durbin, Alternate Robin Rousseau

EXCUSED: Carol Eaton

ALSO PRESENT: Principal Planner, Lee Jay Feldman

I. APPROVAL OF MINUTES

A) March 23, 2010

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

B) April 20, 2010 - Excerpt of Minutes (100 Deer Street)

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

II. OLD BUSINESS

A) Revised Rules & Regulations – Board of Adjustment

Mr. Feldman stated that he had looked at the requests from the previous meeting and noted the issue of members recusing themselves. He referred to a memorandum from the City Attorney on the issue and stated that, due to the opinion rendered in the memorandum, he had not changed the proposed Rules & Regulations in that respect.

Mr. LeMay asked if he referring to the jury standard and Mr. Feldman stated, “correct.” Chairman LeBlanc added that it was also that, once recused, they would not speak to, for, or against a particular petition unless they were the applicant.

A discussion followed among Ms. Rousseau, Mr. Witham and Mr. Jousse on Article VI, Section 10 of the proposed Rules and Regulations reiterating a number of points and opinions from the discussion at the March 16, 2010 meeting specifically whether the middle line of the section should read “...should not participate in any fashion” or “...shall not participate in any fashion.”

Mr. Witham made a motion to add the words, “or an abutter.” at the last part of the sentence after the words, “unless the Board member is the applicant.” Mr. Grasso seconded the motion.

Chairman LeBlanc asked if he wanted to leave the word, “should” in the sentence and Mr. Witham stated he was happy with that. He should be able to speak if the petition was for a neighbor and would affect him. Mr. Parrott recalled the City Attorney stating that they had to give up some rights as a Board member and he was in favor of adding “or an abutter” to the sentence. He actually felt that the word, “should,” should be changed to “shall.” Mr. Witham concurred. Ms. Rousseau stated you should never have to give up your rights and suggested the City Attorney contact the State for a second opinion. Mr. LeMay stated that it was his suggestion at the previous meeting to use the word, “should.” He didn’t agree with the City Attorney that it should be an ironclad rule to totally excuse themselves in those cases and he questioned whether there was state or case law which indicated that. Chairman LeBlanc stated that he thought the position of the City Attorney was that it was not so much a rule or law but the perception of a conflict of interest loomed large. He felt they should have some sort of restrictions to give them guidelines on how they should act.

The motion to add, “or an abutter” to the end of Article VI, Section 10 was passed by majority voice vote, with Ms. Rousseau voting, “nay.”

Mr. Grasso made a motion to adopt the Rules and Regulations for the City of Portsmouth Board of Adjustment as amended. The motion was seconded by Mr. Jousse and passed by majority voice vote, with Mr. Parrott and Ms. Rousseau voting, “nay.”

B) Request for a One-Year Extension of Variances granted May 19, 2009 for property located at 1850 Woodbury Avenue.

Mr. Parrott asked if this was the second request for an extension and Mr. Feldman stated that it was the first.

Mr. Parrott then made a motion to grant a one-year extension which was seconded by Mr. LeMay and approved by unanimous voice vote.

C) Motion for Rehearing regarding 100 Deer Street (formerly a portion of 195 Hanover Street)

Mr. Witham stated that the request for rehearing brought up two points, one the calculation of parking spaces and one the definition of restaurant and conference center. He didn't see any conflict with the second part but asked Mr. Feldman if he could help him understand parking.

Chairman LeBlanc stated that the easiest way to explain it was that historically the Planning Board had gone by the approval that had been given to a site until they had the Certificate of Occupancy. Changing the parking had, according to the Planning Department, no effect on the proposal. The appellants' contention was that was not the way it should be.

Mr. Feldman stated that was correct in a nutshell. The application was previously approved under the old ordinances and, per RSA 674:39, there was a four year exemption. They were capable of continuing to review that project under the old ordinance and were exempt from any ordinances being brought into effect.

Mr. Jousse made a motion to deny the motion for rehearing. Mr. Parrott stated he would not support it but would second it.

Mr. Jousse stated that the two criteria for granting a rehearing were that evidence had been presented that was not available at the time of the original rehearing and that an error in the application of the law was made on their part and neither one was present in this case.

Mr. Parrott stated that he felt there was enough confusion as to which ordinance was in effect and it was an important enough issue to get straight, which might require a memo from the Legal Department. There were also technical issues on which the Planning Department could advise them with respect to what was a restaurant and a conference center. This was one of those rare cases where there was enough meat to grant a rehearing and, for that reason, he would oppose the motion.

Mr. Jousse stated that, under state law, until they got their occupancy permit, if they applied for changes in the original plan, it would come under the old versus the new ordinance and he felt the Planning Department was entirely correct in how they proceeded with their findings.

Ms. Rousseau stated that she believed the application date was prior to January 1 and that was why they voted the way they did. Chairman LeBlanc stated that he believed the application in question came after the applicants had received approval under the old rules and regulations to go ahead with what they were doing with the site. He understood

that once the certificate of occupancy was given, it meant that the construction phase was over and any changes after that fell under the new regulations but prior to that it was the old regulations that prevailed.

Mr. Feldman referred to the memorandum he had sent the Board on the initial appeal which the Board had denied at the previous meeting. What was before them was a request for them to rehear their previous decision to deny the appeal of the Planning Board's action. Relative to the timing of the process, the Chairman was correct that the new ordinance was enacted January 1 and the application which had gone before the Planning Board was a March 18 application for the Planning Board to make changes to the site plan approval.

Mr. Jousse stated that the fact that somebody was bringing up the new ordinances was, he believed, just another step in trying to muddy up the water because the new ordinances didn't have anything to do with this particular project. Chairman LeBlanc added that they had heard all this at the last meeting so there was no new information coming forward. They had gone over it when they denied the appeal.

The motion to deny the Motion for Rehearing was passed by a vote of 6 to 1, with Mr. Parrott voting against the motion.

D) Case # 4-8

Petitioner: Ideas in Motion, LLC

Property: 28 Langdon Street Assessor Plan 138, Lot 46

Zoning district: General Residence C

Requests: **Special Exceptions**, Section 10.440 Table of Uses use(s) 1.42 and 1.53 to allow 5 dwelling units on the same parcel in the GRC zone and to allow the conversion of a building existing on January 1, 1980 with less than the required minimum lot area per dwelling unit as specified in Article 5; **Variance(s)** Section 10.521 Table of Dimensional Standards to allow 5 units on a parcel of 6391 square feet where 3500 square feet per unit is required; Section 10.1112.30 to allow for 5 parking spaces on the lot where 9 are required. (*This petition was postponed from the April 27, 2010 reconvened meeting.*)

Mr. Witham made a motion to take the petition off the table which was seconded by Mr. Grasso and passed by unanimous voice vote.

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernard W. Pelech stated that he was appearing on behalf of the applicant, the owner of unit 5 at 28 Langdon Street Condominiums. Unit 5 was the free-standing former carriage house/garage shown in the aerial photo he distributed. In 2007, the units were converted to condominiums with the garage/carriage house becoming unit 5. In the General Residence C district, 4 units were permitted and 5 to 8 were allowed by special

exception, which was the first relief they were seeking. He stated that the carriage house was in bad shape. Currently used for storage, they would like to convert it to a two bedroom residence. He cited another section in the Table of Uses which allowed a special exception to be granted to allow the conversion of a building existing on January 1, 1980 with less than the required 3,500 s.f. lot area per dwelling unit

Addressing the criteria for a special exception, Attorney Pelech stated that there would be no hazard to the public or adjacent property on account of fire or release of toxic material. There would be no additional risk or hazard due to converting the structure into a residential unit. The potential for fire was greater now than if turned into a residence with smoke detectors. He stated that there would be no change in the essential character of the neighborhood. The building footprint was not changing and there would be no changes to the site except for new siding and doors. There would be no changes to the parking areas or accessways, no noise, odors or pollutants produced and no outdoor storage of equipment or vehicles. The site would be more attractive and if anything would result in increased property values.

Referring to the aerial photograph, Attorney Pelech stated that Langdon was a one-way narrow street and the addition of one residential unit would not increase traffic or create a safety hazard. There might be a slight increase in the demand for water and sewer services but no effect on the demand for other municipal services. One additional residential unit would not create an excessive demand and, with no exterior changes, there would be no increase in storm water runoff. He concluded that the six criteria necessary to grant a special exception had been met.

Turning to the variances required, Attorney Pelech stated that this had been advertised as requiring two variances but he did not believe that a variance from Section 10.521 was required and had not applied for it. If the special exception was granted under 1.53 in the Table of Uses, it allowed the conversion of the building even if it did not have the square footage per dwelling unit. The Planning Department believed a variance was necessary and so advertised it. The second variance was to allow for 5 parking spaces on the lot where 9 required. There were 5 units and the condominium documents say that each unit gets one space so the owners know that going in. He noted that, under the old ordinance 7.5 spots would have been required.

Addressing the criteria for granting the variances, Attorney Pelech stated that the application met the tests set out in Malachy v. Glen and the Chester Rod & Gun Club cases to determine that a variance was not contrary to the spirit and intent of the ordinance or contrary to the public interest. This was a dilapidated carriage house. Rehabilitating it and turning it into a fifth unit would not change the essential characteristics of this dense neighborhood with multi-family dwellings. Concerning any threat to the public safety, health and welfare, he stated that they would, if anything, be benefited by conversion from a vacant building to a residence. Attorney Pelech maintained that, in the justice test, the hardship on the applicant if the petition were denied outweighed any perceived benefit to the general public. The general public

would benefit from an additional residential unit which would probably be available to the workforce.

With regard to any diminution in the value of surrounding properties, Attorney Pelech stated that Langdon Street was between Islington and McDonough Streets with many multi-unit dwellings. The addition of a fifth unit would actually enhance values due to the aesthetic improvements to the property. He stated that special conditions would result in a hardship if the ordinance provisions were literally enforced. There was no fair and substantial relationship between the ordinance provisions and the application to the property. The ordinance provision was to ensure adequate off-street parking on the lot. Because of the small size of the units, 5 were all that could be accommodated. This was recognized in the condominium documents. The second part of the hardship test was whether the request was a reasonable one. He stated that these were reasonable uses and a fifth unit was allowed by special exception. It was reasonable to have five parking spaces. He concluded that the criteria were met and, if the Board felt it necessary, they met the criteria for Section 10.521 as well. He submitted a list of the abutters in support and read the petition including the names of those who had signed it, noting that a majority of the unit owners approved the change. In response to a question from Ms. Rousseau, Attorney Pelech stated that the units were 1,230 s.f., 650 s.f., 940 s.f. and 820 s.f. Ms. Rousseau added that these were really one bedrooms where they would only have one car.

Chairman LeBlanc stated that Mr. Feldman had pointed out that the condominium documents said that there could be no structural addition or alteration without the prior written consent of the association and they did not have such document in the packet. Mr. Feldman added that he had on several occasions requested an authorization letter from the association but had not received it. Attorney Pelech directed them to subsection (a) on page 5 of the condominium documents where it indicated that if it were allowed by the City of Portsmouth, unit 5 could be used for residential purposes. They would be happy to provide something in writing as a condition of anything the Board granted. He noted that the one unit owner who had concerns had made inquiry of the city and was no longer concerned.

Ms. Rousseau asked if Mr. Balakier was an official of the condominium association and Mr. Anthony Balakier stated he was the owner of the unit but not an officer of the association.

Mr. Witham stated that, if someone wanted to make a motion, it could be conditional on providing the letter.

SPEAKING IN OPPOSITION TO THE PETITION

Ms. Michele Wirth stated that she lived at 439 Hanover Street, at the corner of Hanover and Brewster, and had submitted a letter of opposition. Noting that they were granted an appeal in December of 2000 to have less than 1,600 s.f. per unit where 3,500 s.f. were required, she stated that adding a 5th unit would result in less than a third of what was

required, which would be against the spirit of the ordinance which was to keep areas from being too dense. Regarding parking, a couple could have two cars and they currently have parking for 6 cars stacked three deep. She felt this would require backing out onto the street creating a safety issue. She maintained that, while she could understand the desire for profits and to use assets, financial gain was not a cause of declaring a hardship. In response to questions from Ms. Rousseau, she stated again that she lived at 439 Hanover Street and confirmed it was one block away. She did not park on the street but others in the units did.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Attorney Pelech stated in rebuttal that the parking spaces shown on the plan had always been in that location and were grandfathered, not subject to the new ordinance. They were the only parking on the site.

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

DECISION OF THE BOARD

Ms. Rousseau made a motion for discussion to grant the special exception as advertised and Mr. Grasso seconded the motion for discussion.

Ms. Rousseau stated that she wanted to start the discussion on Mr. Pelech's point regarding whether or not they needed to grant the special exception plus the variance for section 10.521. She thought it was a good point that, if they approved the special exception, why did they have to deal with the first variance. She put it out for discussion and to ask Lee Jay what the thought was behind this.

Mr. Feldman read from 1.50 of the Table of Uses regarding conversion of a building existing on January 1, 1980 relative to the required minimum lot area per dwelling unit. The table didn't specify how low it could go and staff believed a variance was needed even if the request for a special exception was granted. They had to grant something to allow the density to be a number certain. Otherwise there would be no density size attributed to the parcel.

Ms. Rousseau called for other thoughts. When Chairman LeBlanc asked if she would like to speak to the motion, she stated she had made a motion for discussion and I'll speak to the points once the discussion has been ended. Mr. Witham asked if it was a positive motion and Chairman LeBlanc confirmed it was, to grant the special exception. Mr. LeMay stated he thought it was reasonable to go for some number certain regarding density. Chairman LeBlanc asked again for the motion to grant.

Ms. Rousseau stated that there would be no hazard to the public or adjacent properties on account of fire, explosion or the release of toxic materials. She saw no argument or evidence to support any detriment to property value. If anything, she agreed with Mr. Pelech's argument that values would possibly increase. She stated that there would be no

creation of a traffic safety hazard or increase in the level of traffic. It was not even an abutter but someone a block away who had an issue with traffic and parking but they had 8 people in the neighborhood who did not have a problem so that carried more weight. There would not be a substantial level in the level of traffic congestion due to a two bedroom condominium nor an excessive demand on municipal services. She saw no evidence that there would be any increase in storm water runoff and felt that all the criteria for granting a special exception had been met.

Mr. Grasso stated that he had seconded for discussion but would not support the motion. While the applicant had stated that there would be no creation of a traffic or safety hazard, when he had recently visited, there were three cars parallel parked in front of the building. He couldn't see adding one or two more cars on the street.

Mr. Witham stated that the reality was that this was currently an unoccupied carriage house generating no noise or light. Somebody had a deck probably 5' away from this structure and there would be a different experience in the summer on that deck when everything could be heard in that unit and light from the unit would go into the first unit. It was too congested to put a living unit 5' from someone else. He felt there would be a detriment to property values from issues with noise and, to some extent, light and air. It would detract from year-round living space.

Mr. LeMay stated that he was going to make exactly the same points. Mr. Jousse stated that he also would not support the motion. This was a very narrow street and municipal services had to "thread the needle" going through that part of town. He knew it was only one unit, but if everybody in town added just one more unit it would be a problem and the demand on services from the City was taxed as it was.

Ms. Rousseau responded that the actual special exception criteria noted excessive demand on municipal services and she did not think a two bedroom condo would be excessive. She agreed with Mr. Pelech's argument that this would add to workforce housing and be in keeping with the objectives of the ordinance. She noted it was also in walking distance to the downtown. There was a whole south end with people living on top of one other and you didn't hear about any problems. People in walking distance of downtown gave up something for that.

Mr. Parrott read the portion of the criteria for a special exception dealing with parking stating that in this case the vicinity was probably the frontage for the property because everyone treasures their own frontage. The property was only 78' across which included the driveway where they couldn't park. In this particular case, if you looked at the words in the special exception standard, he would take the vicinity to be very close to the building. He also felt it was not unreasonable to say that there might be two vehicles per unit.

The motion to grant a special exception failed to pass by a vote of 1 to 6, with Messrs. Grasso, LeMay, Jousse, LeBlanc, Parrott and Witham voting against the motion.

Mr. Witham then made a motion to deny both variances, which was seconded by Mr. Parrott

Mr. Witham stated he would go back to his point that he felt there was a diminution in surrounding property values due to the proximity of this conversion to some existing dwelling structures. He agreed that there were areas in the city where people were 5' apart but they were also zoned differently with different setbacks. He cited several examples. Owners bought into it knowing the deal. The property owners abutting knew that they had property rights protected and he felt they did need to protect them in this situation. He felt there was a fair and substantial relationship between the provisions of the ordinance and its application to this property. The condominium documents saying that there could only be one car per unit did not have any weight. The property could easily have 13 cars associated and could cause additional traffic flow, which was not needed on this tiny lot and congested area. The ordinance established one and half spaces for a reason and to go down almost a half space per unit was going against the purposes of the ordinance. If there was just one requirement which was not met, they couldn't support it.

Mr. Parrott stated that he agreed. He felt this was a huge amount of relief as the standard for lot area per unit was 3,500 s.f. and they were asking for 1,300 s.f. The fact that the property was old was irrelevant and the Board had to apply the rules for today. With respect to hardship, all they had heard was that this was a storage unit which could be used for something better.

Ms. Rousseau stated that she found it interesting that everyone kept bringing up traffic congestion when about nine residents on this street or abutting streets had no problems. You would think if they were parking on the street that they would have a real problem with this application but they really had not heard from a lot of people in the neighborhood against it but a lot in favor, so that was fascinating – that he would make the argument that people in the neighborhood would have a problem with it when they obviously don't so she didn't see the argument for traffic congestion.

Mr. Witham stated that he didn't throw things out loosely to fascinate people but he had enough time on the Board to realize that it doesn't take a lot to have someone sign a petition. It has some value to sign a petition, yes, but he needed to look at the ordinance and what it's trying to do to safeguard the public as a whole.

Mr. Jousse stated that he agreed with Mr. Witham, noting that if he had nine individually created statements in front of him, it would carry more weight than a form letter signed by nine people. It had been brought out that in the south end, there were dwellings 5' away but those were there. Here they were being asked to create the situation. He didn't think this would be the right thing to do.

Ms. Rousseau read the petition which had been submitted so they would know that these people knew what they were signing off on. She assumed everyone there was fairly

intelligent. She noted they specifically signed off that it would not affect their off-street parking situation.

The motion to deny the two variances was passed by a vote of 6 to 1 with Ms. Rousseau voting against the motion.

- E) Case # 4-9
 - Petitioner: Thomas P. Coakley
 - Property: 231 Bartlett Street Assessor Plan 162, Lot 31
 - Zoning district: General Residence A
 - Requests: **Variance(s)**, to construct a third floor dormer. Section 10.321 to allow for the enlargement of a nonconforming structure; Section 10.521 Table of Dimensional Standards to allow a side yard set back of 8 feet where 10 feet is required. *(This petition was postponed from the April 27, 2010 reconvened meeting.)*

Mr. LeMay made a motion to take the petition off the table which was seconded by Mr. Parrott and passed by unanimous voice vote.

SPEAKING IN FAVOR OF THE PETITION

As Attorney Pelech was passing out some additional material, Mr. Jousse stated that he was inclined to invoke Fisher v. Dover. Attorney Pelech stated that the Chair had asked if he could speak as he was going to address that first. Chairman LeBlanc stated that it was a Board determination whether it was Fisher v. Dover, but he would be allowed to speak to that

Attorney Pelech stated they had a memorandum which he had submitted that evening and the first thing he dealt with was the issue of Fisher v. Dover. As they would recall, they were before the Board on March 23, which minutes they had approved that evenings. He had not had access to the minutes of that meeting although, he asserted, the State statute said they should be available in 48 hours. He maintained that the City of Portsmouth refused to honor the State statute and issue an action sheet. He did recall from March 23 that Mr. Witham made the motion to deny because the height of the roof was going up 4', the ridge of the roof, and these were not dormers, this was a third floor addition. He couldn't argue with him. He advised his client to revise the plan, not to raise the height of the peak of the roof at all and simply add dormers to the building which was what was before them. He submitted there was a substantial and material change from the application denied on March 23 where the height of the building was 4' higher and they were talking about a third floor addition, not dormers. Tonight they were talking about a building that was no higher than the existing structure and simply added a dormer to each side. Mr. Jousse stated that he was satisfied with that explanation.

Mr. Thomas Coakley then stated he was the owner and noted that the previous time they had appeared, the Board felt the dormers were too big. He outlined his family reasons for the expansion noting that they were not looking to build a monstrosity. They were not increasing the structure size or encroaching on any other properties. Referring to a submitted photograph, he noted that they could see an apartment house to the left with a double shed dormer. To the right of the home was a parsonage. Regarding property values, he had gone to look at the Broad Street property cited by the Board at the former meeting and was trying to improve the property not make it something he shouldn't.

Addressing the criteria, Attorney Pelech noted that no one spoke in opposition on March 23. He stated that this was a vertical expansion and they were not expanding the footprint. They needed a variance for the left dormer because the existing structure was 8' to 9' from the property line. The special conditions of the property included the lot which had 53' of frontage but went back and narrowed. Virtually every house encroached into the front and most into the side setbacks and these lots existed prior to zoning. There was a carriage house which prevented any expansion of the footprint and any expansion would need a variance.

Attorney Pelech stated that granting the variance would not be contrary to the public interest or the spirit of the ordinance. This was just a change in square footage going from a two bedroom to three bedrooms. The essential character of the neighborhood would not be changed and it would not threaten the public health, safety or welfare. Justice would be done if the variance were granted as the hardship on the owner was not outweighed by some benefit to the general public. The addition of two new dormers would not increase traffic or the demand for services. He maintained that surrounding property values would not be diminished. The previous proposal was more extensive and yet nobody spoke in opposition. He stated that this simple expansion of an allowed use was reasonable and would not result in overcrowding of the land or a decrease in light and air. He noted that the changes that had been made were a reflection of the Board's comments at the March 23 meeting.

Ms. Rousseau asked about the proposed rear view in the submission and Attorney Pelech stated that the the existing structure was 8' so the dormer would be 8'. When she commented that it seemed like this was basically increasing a nonconforming structure, he agreed that it was no closer to the property line in the air than on the ground.

An abutter on Woodbury Avenue stated that from the back of her house they could see the front of the property. She distributed some pictures of the area stating that she was in favor of the variance. Referring to an earlier petition where parking was an issue, she stated that they were pleased to see that this would be maintained as a single family house which would result in less cars.

Mr. Michael Morash stated that he lived directly across from the property at 248 Bartlett Street. He and his wife liked to see improvements to the neighborhood and were 100% behind the project and hoped the Board would approve it.

**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. Witham.

Mr. LeMay stated that this was a much more modest request than the previous one and on the whole he felt they could move forward. He stated that there were special conditions which made this property different including the previous nonconforming use and the siting of the house on the lot. This was a small scale proposal in keeping with the area which would not be contrary to the public interest. The interests of the neighbors had been addressed with respect to light and air. He didn't see any benefit to the general public in denying the variance while there would be a hardship to the owner if it were denied. There was no evidence of any diminution in surrounding property values.

Mr. Witham stated that he had made the motion to deny the previous petition as it had been presented as dormers but in reality was a third floor addition with a scale much too large which would affect the neighborhood. The homeowner had looked at the Broad Street property he had mentioned in the previous meeting to get a sense of what he meant. He stated that this felt truly like dormers which wouldn't change the essential character of the neighborhood so he was comfortable with the new proposal.

The motion to grant the petition as presented and advertised was passed by a unanimous vote of 7 to 0.



- F) Case # 4-13
 - Petitioner: Elizabeth M. Mackey
 - Property: 214 Aldrich Road Assessor Plan 153, Lot 27
 - Zoning district: Single Residence B
 - Requests: **Variance(s)** to allow the construction of a 24' x 24' garage. Section 10.521 Table of Dimensional Standards to allow; A). a side yard setback of 3 feet where 10 feet is required; B) a rear yard setback of 5 feet where 30 feet is required and; C) a building coverage of 35% where 20% is allowed. *(This petition was postponed from the April 27, 2010 reconvened meeting.)*

Mr. Jousse made a motion to take the petition off the table, which was seconded by Mr. Grasso and approved by unanimous voice vote.

SPEAKING IN FAVOR OF THE PETITION

Ms. Elizabeth Mackey referred to the submitted packet stating that she would like to build a two car garage to house a vehicle and lawn equipment. She referenced the aerial view and the depictions of the proposed garage and driveway which they were proposing to extend. On the fourth page was a map of the area and photographs of other garages in the neighborhood. She indicated the photograph of her house and outlined what she wanted to do, which was put the garage to the side so there would still be a yard to enjoy. She noted that she had included letters of support from each of the abutting neighbors to the rear, side and across the street.

When Ms. Rousseau asked if she had submitted the memorandum in support of application and Attorney Pelech stated from the public seating that he had done so.

Ms. Rousseau asked why a garage could not be designed to fit and noted that in the submittal the small size of the lot was listed as a special condition. Examples of neighbors' garages had been submitted but their lots might be larger and could accommodate a garage. Ms. Mackey responded that, to be in compliance, the garage would be in the back yard. In response to a further question from Ms. Rousseau, she stated that she needed a two stall garage as she had two cars, one for work and one she was currently paying to store elsewhere as it would deteriorate outside.

Ms. Rousseau stated she was just trying to get why it was such a hardship because the applicant had decided to buy a smaller lot and house than the neighbors. Why should she have the same structure as they did. Ms. Mackey stated that, when she moved into the neighborhood she looked at all of the houses and even some of the smaller lots had garages. She thought that meant garages could be built but she didn't realize that her lot was so small that she would need to get a variance.

Attorney Pelech stated that he would like to point out that the advertised lot coverage area was incorrect. If granted, it would actually be 24% where 20% was allowed, not the 35% advertised. Dealing with the hardship, the subdivision was created in 1933 with a bunch of lots, some 45' wide and some 50', ranging in depth from 100 to 185'. This was one of the smaller ones at 117' x 50'. The owner did have 10' on one side so could have a driveway but couldn't comply with the rear setback or the garage would be up against the house. When Ms. Rousseau stated that some people had that situation, he replied but she couldn't get into it. He circulated two photographs indicating where the garage would be situated and the distance to the neighbor's house. Referring to the submitted plan, he detailed why the garage had to be where it was proposed and the ramifications of moving it to try to meet the setbacks. It was possible that the side yard setback could be moved to 5' but not a lot more or the turn into the garage couldn't be made. He noted that the existing house met the front yard and left side yard setbacks so they did have the ability to have the 10' driveway.

Addressing the criteria, Attorney Pelech cited the cases of Malachy Glen and Chester Rod & Gun. Indicating all the garages on the surrounding properties, he stated that the essential character of the neighborhood would not be changed. Granting the variance was not going to threaten public health, safety or welfare and the neighbors to the rear and to

the right were supportive. He himself was an abutter and had no problem with the variance being granted. In the justice balance, he could see no public benefit in denying the variance. The small lot created special conditions resulting in a hardship. There would be no diminution in the surrounding property values as the garage would sit back behind the house and behind the neighbor's house. Light, air and access would not be affected. He stated that literal enforcement of the ordinance would result in hardship. Referencing page three of their submittal, he noted the shorter depth of the lot so that it was not possible to fit the garage between the house and the setback. The way the house was situated, it had to be closer to the left side than allowed. They were requesting a 3' setback and it could be 5' but not much more to allow access to the garage. He stated that no fair and substantial relationship existed between the purposes of the ordinance and its application to this property as the purpose of the ordinance was to provide light and air and avoid overcrowding. Placing a two car garage to the rear wouldn't affect light and air and it would not be in close proximity to residences. Going to 24% lot coverage would not result in overcrowding. He felt that a two car garage was reasonable in the neighborhood.

Mr. Grasso questioned Attorney Pelech's contention that the lot coverage was advertised as 35% but was actually 24% and asked the size of the house. Attorney Pelech stated that the house was 856 s.f. As a point of clarification, Mr. Feldman stated that, when the application was submitted, the footprint was listed as 1,477 s.f. and it was processed based on that number. In the meantime, the multiplication had been corrected and the department concurred with the corrected numbers.

Mr. Jousse asked why the garage could not be smaller, noting that a number of properties across the street had a one car garage and that those with two car garages had 56' and 65' for frontage. He felt a one car garage was sufficient and proportionate to the lot size. Attorney Pelech stated that the owner had two vehicles and this was a minimal size for a two car garage. He noted that a one car garage would still need a variance for the rear setback and probably for the side. He wasn't sure if that would bring the lot coverage under 20%.

Ms. Mackey stated she was also looking at property value and usage. The smallest two car garage was 20' x 20' but then there would be no space to store a generator. There was water in the basement requiring a sump pump. Even if she could store it in the basement she couldn't lug it out to use. Ms. Rousseau stated that the Board had criteria and had an issue with hardship. She could see what the applicant wanted to do which required a significant variance and they had to look at why it should happen. She asked why a one car garage and a shed would not meet the needs. Ms. Mackey reiterated that she needed storage for two cars plus lawn equipment. In response to questions from Chairman LeBlanc, she confirmed that the garage would be constructed on site and the door, shown in the picture on the left, would actually be the opposite.

Brad Meade stated that he lived at 324 Islington Street but had a vested interest in 224 Aldrich Road which his mother and family owned. Since the applicant had moved there, there were a lot of improvements and they were in favor. They would like to see her stay

there and keep it as a family house. He confirmed the water problems in the area and noted that his mother had a 24' x 24' garage.

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

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

Chairman LeBlanc noted that the variance in lot coverage was reduced from 35% to 24% where 20% was allowed.

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

Mr. Grasso stated that while there had been discussion of a smaller garage, almost anything was going to require one or two variances. The additional size was to accommodate two cars. He did not feel that granting the variance would be contrary to the public interest and they had heard from a direct abutter who was in favor. The garage would still be some distance from the property line so he felt that the spirit of the ordinance would be observed. In the justice balance test, there would be no benefit to the public in denying the variance. It would take cars off the street and also serve as a utility area. He stated that the value of surrounding properties would not be diminished. The hardship was that the applicant was looking to put in a garage and a smaller garage would still need a variance.

When Chairman LeBlanc noted that the Planning Department had suggested that the left side have a gutter if that stipulation would be amenable. Attorney Pelech stated that they were proposing to do what the neighbor had done which would be to gutter both sides which would drain diagonally into a dry well constructed on the right hand side.

Mr. Grasso stated that he agreed with a stipulation that there be right and left gutters which would drain into a dry well.

Mr. Witham concurred. He added that an argument could be made for or against the variance but they had criteria which were intended to take away the subjective. He felt there was no reason to believe that the essential character of the neighborhood was going to be changed or that surrounding property values would be diminished. Quite a bit of relief was requested to the rear but that property line abuts a large yard which was 5' above the grade of the garage so that only the peak of the roof will be visible. He recalled a recent approval of a similar size garage with a pergola which had worked out well. He felt a 30' setback was excessive for the neighborhood and that the garage chosen would be a good fit. He noted that only 4% of relief was requested for the lot coverage.

Mr. Parrott stated that he was inclined to like the project at first but, as he looked at the numbers, the garage was half the width of the lot and close to the side and rear property lines. By moving the garage over a little and with less than optimum size, they could get a lot closer to respecting the setbacks and both abutters. He felt that with a small lot you couldn't always do what you might want and there was nothing to differentiate this from any other lot.

Mr. LeMay stated, to be clear, that the previous approval Mr. Witham had cited did not, he believed, have to do with the garage which was being rebuilt. The variance was not for that but the pergola.

Ms. Rousseau stated that she was voting against the motion. She read a portion of the “unnecessary hardship” portion of the criteria. She stated that they had not seen alternatives but what the applicant would like to have. She felt that the hardship test was not met and there were alternatives which would be more in compliance.

Mr. Jousse stated that he also had a problem with the size, which was nearly the same as the house. A smaller structure would accomplish the objectives of protecting an old car from the elements and storing equipment. He was not convinced there was a hardship with this property which was very similar to others in the neighborhood.

The motion to grant the variance, with the stipulation that there be right and left gutters draining into a dry well, failed to pass by a vote of 3 to 4, with Ms. Rousseau and Messrs Jousse, LeMay and Parrott voting against the motion.

III. PUBLIC HEARINGS

- 1) Case # 5-1
Petitioners: Bradford D. Scott & Elizabeth B. Scott
Property: 94 Mendum Ave Assessor Plan 149, Lot 55
Zoning district: General Residence A
Request: **Variance(s)**: To remove a portion of a garage which encroaches on 94 and 104 Mendum Avenue and to relocate a new garage on 94 Mendum Avenue. To **A)** allow an accessory structure to be constructed with a building coverage of 36.6 % where 25% is allowed and **B)** allow a sideyard setback of 4' where 10' is required; Section 10.521 Table of Dimensional Standards; Section 10.321 to allow the expansion of a nonconforming structure.

SPEAKING IN FAVOR OF THE PETITION

Mr. Jousse questioned the correct lot numbers as there was a discrepancy in the materials and Mr. Feldman confirmed it was Lot 55.

Mr. David Scott stated that they wanted to correct an existing condition where they were sharing an existing garage with a neighbor. There was a shared driveway and the garage actually encroached on the next property so that there was not proper access and egress. They were proposing to remove a portion of the garage from their side and move it to the neighbors' side of the property and build a new garage so there would be separate garages and driveways.

Mr. Grasso asked if, looking at the submitted picture of the garage, they were proposing to take the right hand side. Mr. Scott stated that 7' of the garage was on their property and the driveway was right on the line except where it flared to meet the garage. The neighbors would be left with 12' of garage on their side. Mr. Grasso noted that this was one structure now so he was proposing to remove something, put a wall back up beside it. Mr. Scott said, correct. Mr. Grasso continued, "right on the property line." Mr. Scott stated they would be a foot or so over the property line but it was tight for them and he wanted to leave them with a 12' garage and to do that they needed to be close to the property line. When Mr. Grasso asked if it would be a foot on his side, Mr. Scott stated it would be on their side. They were taking it to their side of the property line.

Mr. Feldman noted that he had queried the Legal Department about whether the abutter at 94 Mendum also needed a variance and, because the change would make their lot much less nonconforming, it was decided that would not be necessary. Mr. Grasso stated that he disagreed, but was o.k. for now.

In response to a request from Ms. Rousseau to talk them through his exhibits, Mr. Scott stated that A showed how the garage lay out on the lot line and where their house was in relationship. Exhibit B showed the impact of removing a portion from their property. Exhibit C showed the existing structure at 94 Mendum with the new garage in relationship to the other neighbor at 76 Mendum. It also showed the 4' setback. He confirmed for Mr. Parrott that the property line would stay where it was and no lot line adjustment would be needed.

Mr. LeMay stated that he would like to have the applicant elaborate the issues regarding hardship. He saw a functional garage owned in common as was the case with a whole bunch of properties. Mr. Scott stated that it was a hindrance for any future sale if they were joined at the hip with a single garage and shared driveway. He stated, "yes" when Mr. LeMay asked if the garage was there when he bought it.

Ms. Rousseau asked how it was written out in the deed and there was a brief discussion about how the situation was covered in the deed and how the garage was taxed. Chairman LeBlanc stated they would have to change the deed if the variance were approved and Ms. Rousseau stated that would be a cleaner situation.

Mr. Jousse stated that moving out of one half of the garage would clean up the situation but he questioned the size of the proposed garage. They would be coming out of a one bay garage and, at least size wise, going into a two bay. Mr. Scott replied that this would be used as a single car garage with only one overhead door. The other 6' or 7' would be

just for storage. 14' was all they could get in width. Mr. Jousse stated that the flower bed really made it tight and he would like to see more than a 4' setback. When Chairman LeBlanc asked about the lot coverage, Mr. Scott stated that table 3 showed the existing and proposed structures and lot coverages.

**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 petition as presented and advertised, which was seconded for discussion by Mr. Grasso.

Ms. Rousseau stated that she saw nothing that would be contrary to the public interest or against the spirit of the ordinance. She felt that justice would be done and that the request met the hardship criteria by clarifying ownership of a garage from a deed perspective. She could see why the current situation would be undesirable because of lack of clarity. She stated that the value of surrounding properties would not be diminished and, if anything, values would increase. It would be clearer for both sides of the fence and make an inconvenient situation better.

Mr. Grasso stated that he had seconded for discussion and wouldn't support it. He had a couple of issues with granting the variance. They were proposing to divide the garage although not in half but the applicant stated 1' onto his neighbor's property. He had a problem with granting a variance for that. He also felt they were creating a variance violation on the neighbor's property with the 1' setback.

Mr. Witham stated that they were cutting the garage so the neighbor now had a 1' setback on the side and Mr. Grasso stated, "right, but he's the applicant not the neighbor." Chairman LeBlanc indicated that, according to the department memo, both parties to the garage signed the application. Mr. Grasso noted that it was advertised as the petition of Bradford and Elizabeth Scott, which Mr. Feldman stated was correct but both parties did sign. Mr. Grasso stated that he hadn't received a copy of the application.

Mr. Witham stated that he would support the motion. Almost everything in that neighborhood had some 4' setback, not to say that because everyone else had it that a variance had to be given, but he felt there was a hardship. They needed to show a special condition distinguishing the property from others in the neighborhood and he couldn't think of another property where two lots shared a garage. He noted that they were looking for less than a 4% difference in lot coverage and kept to a one bay garage in an extra space tucked behind the house. In terms of other options, they could eliminate the main door and push it over 3' but he felt it was needed for access. While he could see some legitimate concerns, he was comfortable with granting the variance.

Mr. LeMay stated that he agreed that there would be no public interest involved but he could find no hardship, only an inconvenience at best. There had been an argument with regard to property value, but the applicant knew what he was buying. It was not like this was being forced on him. Also, with respect to legal description and so forth presumably there were deeds, mortgages, examinations. He couldn't get around this just being an inconvenience and a preference for a larger garage and he had not heard justification for that.

Mr. Witham stated that they needed to keep in mind that the ordinance looked favorably on bringing a property into greater conformity and, to some degree, this did. He felt the City Tax and Assessors Departments would rather see the proposed situation than a shared garage.

Ms. Rousseau stated that she believed that the petition did meet the hardship test because they do not have a reasonable use of the garage and have to get the other owner's permission to do anything. This would make them whole.

Mr. Parrott stated this was another 50' lot and his concern was the size of the garage which was fairly large at 20' x 20'. The one remaining on the other lot was 12' x 18'. He felt where it was positioned was ambitious and, with a little shrinkage and movement, they could get a lot closer to respecting the side setback.

The motion to grant the petition as presented and advertised failed to pass by a vote of 3 to 4, with Messrs. Grasso, Jousse, LeMay and Parrott voting against the motion.

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- 2) Case # 5-2
Petitioners: David D. Paquette and Eliz J. Paquette
Property: 8 Pheasant Lane Assessor Plan 268, Lot 99-8
Zoning district: Single Residence B
Requests: **Variance:** To construct a 24' round above ground pool and a 900 square foot deck with a side yard setback of 30' where 50' is required under the Planned Unit Development ordinance Section 10.725.32

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernard Pelech stated that this was a planned unit development constructed about 10 years ago. #8 could be seen in aerial at the end of a cul-de-sac and the driveway goes off down to the building shown with a circle labeled pool. He noted that the applicant proposed putting in the pool with a 30' side yard setback. He identified features of 7 and 8 Pheasant Lane and noted that there was a stockade fence around the Portsmouth Used Car Super Store which backed up to the applicant's building. Referring again to the aerial photograph, he noted that to the rear of the property were densely wooded wetlands. He submitted a set of photographs identifying the various views from the pool. He stated that this was an isolated spot with the only real property affected that

of the super store. He stated that he had letters of support, from which he read, from the owners of 7 and 9 Pheasant Lane. Those were the two houses seen in the aerial behind the applicant's house with a picket fence separating them from other Pheasant Lane properties. There was a 50' to 60' buffer then an additional stockade fence before getting to the super store. He stated that light and air and open space in the P.U.D. He indicated on the plan how the wetlands buffer zone actually went through the home.

Addressing the criteria, Attorney Pelech stated that granting the variance would not be contrary to the public interest nor the spirit of the ordinance. This would not affect the essential characteristic of the neighborhood or threaten the public health, safety or welfare. It would be better to be 30' from the property line than be in the buffer zone. Given the location of the property and its proximity to commercial uses, the hardship on the owner if the petition were denied outweighed any possible benefit to the general public. The value of surrounding properties would not be diminished and he again cited the letters from two abutting property owners. The special conditions making the property unique were the wetlands to the rear of the property which required the pool to be moved within 30' of the external property line. He stated that this was a reasonable use and a pool was a normal accessory use. Noting again the proximity to the dealership, he stated that there was no fair and substantial relationship between the restriction and its application to this property.

When Ms. Rousseau noted that his request was for a pool and a deck, Attorney Pelech stated that the deck was almost a square around a circular pool, with the edge of the deck 30' from the external property line. The pool would be further. Mr. Jousse asked if they had considered moving the pool 5' closer to the house or reducing the size of the deck. It appeared that the deck and pool could be moved to lay at an angle to the wetland buffer.

Mr. David Paquette stated that, if the pool and deck were configured any closer to the east, it would require demolition of the existing deck and possible encroachment into the buffer. When they purchased the property in 1999, the house was totally outside the buffer zone but that had since been increased resulting in less usable space for the lot which created a hardship. It was possible to slide the pool a little bit to the east as had been suggested but they would like to keep a deck around for safety as they have small children. A discussion followed between the Board members and the applicant about various placements, the impact of the backyard slope, the location of the P.U.D. in relation, and the dimensions of the pool and deck at 20' in diameter and 34' by 36'.

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. Parrott.

Mr. LeMay stated that granting the variance would not be contrary to the spirit and intent of the ordinance which was to assure light and space. They were not encroaching on anyone else or changing the character of the neighborhood. Substantial justice would be done as there would be no benefit to the general public in enforcing the setback requirement. There were wetlands on one or two sides and a commercial use on the other. The wetlands would not be developed so there was no encroachment. Also for those reasons, there would be no diminution in the value of surrounding properties as they wouldn't be affected. There were special conditions in the property. The siting, the pitch of the lot, the wetlands and the adjacent commercial use made application of the ordinance result in an undue hardship for the owner.

Mr. Parrott stated that a 50' setback was a bit of an oddity. With wooded wetlands at the back, there was no concern to anybody and the pool would enhance use of the property.

Ms. Rousseau stated she would not vote in favor of this unless the variance language was changed. The way it was written, it gave the owner approximately 1352 s.f. to work with rather 900 s.f. and, as she had seen many times. They could say in the future that they now wanted to add a two bedroom apartment and the footprint wouldn't be increased because they already had a deck there. She wanted to make it clear, and it was stretching it for her because she was having a hard time getting over the spirit of the P.U.D. ordinance. If it were split up so it was very clear as to what total square footage they were approving for the variance then she would vote in favor. If it were not changed, she would vote against.

Chairman LeBlanc stated that he believed it was as presented and advertised which was that the pool was within that 34' x 36' area of the deck so there was no way they could go beyond that. Mr. LeMay agreed. Ms. Rousseau stated that, in twenty years, they were not going to care about how it was presented. They would look at the variance language specifically to add a two bedroom apartment if, in fact, that came up so she liked the variance language to be very specific as to what was being granted. The way it was written they were granting over 1300 s.f.

Mr. Jousse stated that he would feel much more comfortable if the setback were 35' but he would go along with 30'. He had no problem with the square footage of the deck because they were only concerned with the setback to the northwest side of the property and that was one boundary they were setting and the other boundary was the wetland buffer zone. As long as the applicant did not cross either of those two lines, he could build all the decks he wanted and they could say nothing about it.

Chairman LeBlanc stated that, in a planned unit development, the envelope of the house was given essentially a free rein to be wherever it wished within a particular geographic setting on the lot and the 50' setback that was there was so that there was open space within the planned unit development area and they were encroaching on that.

Mr. Witham stated that, while he would feel differently if this were a great room, an above ground pool, probably 4’ above the ground, was as close to a temporary structure as you could get.

The motion to grant the petition as presented and advertised was passed by a vote of 6 to 1 with Ms. Rousseau voting against the motion.

Mr. Witham made a motion to suspend the ten o’clock rule, which was seconded and passed by unanimous voice vote.

- 3) Case # 5-3
 - Petitioners: Karen E. Lloyd and Thomas P.Martin
 - Property: 1248 South Street Assessor Plan 151, Lot 4
 - Zoning district: General Residence A
 - Request: **Variance:** To expand an enclosed porch with a dimension of 2’3” x 12’8” or 28.5 square feet placing the building coverage at 30.9% where 25% is allowed; Section 10.521 Table of Dimensional Standards; Section 10.321 to allow the expansion of a nonconforming structure.

SPEAKING IN FAVOR OF THE PETITION

Mr. Thomas Martin stated that they were asking for a variance to expand the back porch and create a better entrance to the house. He stated that it would not be contrary to the public interest or the spirit of the ordinance to improve their property and well being. It was also the goal of the ordinance to manage the size of the property. The hardship was the odd size lot. The two lots on either side were substantially larger and there was no other lot as small. The porch would be at the back and both adjoining properties had garages so, from a line of sight perspective, there would be no concern to the neighbors. He stated that there would be no benefit to the public in denying the variance but granting it would be a benefit to them. They had young children and could use the additional space. They were taking out some of the driveway so while they would be adding some impervious surface, they would also be removing some.

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

Mr. Jousse stated that granting the variance would not be contrary to the public interest. The porch needed some help and tearing it down and rebuilding a new one would be a definite improvement and safer. This would be within the spirit of the ordinance and substantial justice would be done. Nothing had been presented as to surrounding property values. This was a house you could miss when you drove by as it was surrounded by much larger pieces of property. He stated that the odd shaped lot was really the hardship. He felt this was a minor request and the best use of the land.

Mr. Witham stated that a lot coverage increase of .6% was a very minimal request. It was needed to make the space more usable. Lot coverage was in the ordinance to control density but, looking at the distance between surrounding structures, this should present no problem.

The motion to grant the petition as presented and advertised was passed by a unanimous vote of 7 to 0.

- 4) Case # 5-4
 Petitioners: John Biskaduros & Jeanine E. Biskaduros
 Property: 321 Mckinley Road Assessor Plan 247, Lot 27
 Zoning district: Single Residence B
 Request: **Variance:** To construct a 16 'x 16' sunroom with a 15' rearyard set back where 30' is required; Section 10.521 Table of Dimensional Standards; Section 10.321 to allow the expansion of a nonconforming structure.

SPEAKING IN FAVOR OF THE PETITION

Mr. John Biskaduros stated that they owned a raised ranch and space, especially in the kitchen/dining area was limited and they needed more due to a large family. To expand another room out back would be too much but they could afford a sunroom which his wife really wanted. He stated that the existing deck was curved in and about 12' from the neighbor in the back. They would cut 3' off that, reinforce the deck and then build a 16' x 16' room on top. He had talked to all his neighbors and they had said to "go for it."

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 Mr. Parrott.

Mr. Grasso stated that this would be actually shortening what was there and adding a sunroom on an existing deck. This would be located in the back and he could see no public interest involved. For the most part, it wouldn't be seen. There was enough surrounding space for the neighbors so that the spirit of the ordinance would be observed and there would be no benefit to the general public in denying the variance. He stated that he did not believe that the value of surrounding properties would be affected. The hardship was that the deck was existing and they were not looking to go out. They were actually moving back from the setback.

Mr. Parrott agreed, pointing out that the side setback was more than generous at 32'. The way the adjacent houses were situated, it looked at basically woods. He felt a 16' x 16' sunroom was modest, would not disturb anyone else, and would make the house a lot more usable.

The motion to grant the petition as presented and advertised was passed by a unanimous vote of 7 to 0.

5) Case # 5-5

Petitioner: John J. Vendola

Property: 290 Miller Avenue Assessor Plan 130, Lot 12

Zoning district: General Residence A

Request: Variance(s): to remove existing porches, enclose the rear accessways and stairs and to increase the size of the living space which includes a 0' side yard setback where 10' is required and building coverage of 35% where 25% is required and 33.1% currently exists, Section 10.521 Table of Dimensional Requirements; Section 10.321 to allow the expansion of a nonconforming structure

SPEAKING IN FAVOR OF THE PETITION

The applicant, Mr. John Vendola, stood at the podium.

Mr. Jousse stated that he would like to invoke Fisher v. Dover as this was virtually the same application they had heard in March. The only apparent difference was that in March, when it was unanimously denied, the building coverage was 38% and now the applicant was bringing it back at 35%. The only thing he could see between the two was a small reduction in one of the decks. Everything else was pretty much the same.

Mr. Parrott seconded for discussion and Mr. Jousse stated that he had spoken to his motion.

Mr. Parrott stated that he thought that what Mr. Jousse said was factual. He was surprised to see the request come back in such a similar fashion. He had expected to see substantial differences, but unless he was missing something, he really didn't see them. He would be happy to listen to a discussion, perhaps from the Planning Department, as to what the differences were.

Mr. Witham stated that he had similar concerns. He could see where they attempted to bring down the scale a little, with the upper ridge lowered somewhat and the walls from 6' to 4'. The concerns they were dealing with last time as to scale and setbacks and what was trying to be made out of this structure still all existed. If he felt the same about this as he did last time, even with the slightly reduced ridge line, there was no substantial change in the application. He usually was willing to give the applicant the benefit of the doubt instead of invoking Fisher v. Dover but he was inclined to do it in this situation.

Chairman LeBlanc stated that he believed the application was essentially the same as what had been heard and, if so, they could not hear the case. He advised the applicant that what was happening was that they believed the application was the same as they heard in March and they had to evaluate and make a decision. If it was the same, they could not hear the case. Mr. Witham added that the term they went by was “materially different.”

Mr. Vendola stated that it was obviously subjective but the addition was 50% as large as the last addition. It was half the volume and the height of the roof had been taken down to the existing height of the roof. Last time, the height was approximately 33' to 34' and it now was 28' equal to the current roofline. He had reduced the addition by 50% and the height down to the existing roof and the existing roofs of the neighbors. He had put in pictures of the neighborhood and, he had three pictures and would like to..

Chairman LeBlanc interjected that they would have to make their decision.

Mr. Witham stated that 50% reduction was entirely different. He didn't pick that up on the elevations.

When Mr. Vendola referenced the lot plan, Chairman LeBlanc again interjected that they would take care of it. Mr. Witham stated that, if it were a 50% smaller volume, he felt he should listen to it. Chairman LeBlanc agreed that was a substantial difference in size. He continued that they had a motion to invoke Fisher v. Dover and Mr. Witham asked Mr. Feldman if he wanted to add anything to this. When Mr. Feldman indicated he had nothing to add beyond what they had seen, Mr. Witham stated he knew they didn't do volume calculations so they were kind of going on his (the applicant's) word. Mr. Feldman added that the application didn't indicate that reduction other than seeing the same drawings they had seen, which suggested that the size had been shrunk to some extent. Mr. Parrott stated that, volume aside, the total amount of lot coverage was still way over and practically the same as it was. Chairman LeBlanc asked if he was in favor of Fisher v. Dover and he stated he was.

The motion to invoke Fisher v. Dover and not hear the application was passed by a vote of 5 to 2, with Ms. Rousseau and Mr. Witham voting against the motion.

Chairman LeBlanc stated that Fisher v. Dover had been invoked and he was sorry they could not hear the petition. Mr. Vendola stated that he did not understand that.

Chairman LeBlanc again explained that if they felt that the application was substantially the same as what they denied previously, then they could not get to the merits of the case. Mr. Vendola stated they had not even looked at the calculations. When Chairman LeBlanc started to speak, Mr. Vendola interrupted to say that the lot plan showed that the addition was 50% of the prior addition. That was the significant reduction.

Chairman LeBlanc indicated he could appeal their decision but they had invoked Fisher v. Dover. Mr. Vendola interjected that the houses in his neighborhood had 40% coverage. Chairman LeBlanc indicated that was not the point. Mr. Vendola continued that it was 35% to 40% of their lots including a house then under construction. Mr. Witham stated that, if they were going to appeal, they would need to prove not what the neighbors were doing but what was materially different in this petition from the last time. When Mr. Vendola responded that he thought they had done that and started to refer to a document, Chairman LeBlanc stated, “Thank you, sir.” There was no further discussion.

IV. ADJOURNMENT

It was moved, seconded and passed by unanimous voice vote to adjourn the meeting at 10:45 p.m.

Respectfully submitted,

Mary E. Koepenick
Administrative Clerk