

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

**MUNICIPAL COMPLEX, 1 JUNKINS AVENUE**

**EILEEN DONDERO FOLEY COUNCIL CHAMBERS**

**7:00 p.m.**

**March 15, 2011**

**MEMBERS PRESENT:** Chairman David Witham, Derek Durbin, Carol Eaton, Thomas Grasso, Alain Jousse, Charles LeMay, Arthur Parrott

**EXCUSED:** Alternate: Robin Rousseau

**ALSO PRESENT:** Principal Planner, Lee Jay Feldman

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It was noted that Mr. Durbin would be absent for the initial hearings.

**I. APPROVAL OF MINUTES**

A) December 21, 2010

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

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B) January 25, 2011

It was moved, seconded and passed by unanimous voice vote to accept the Minutes as presented. It was noted that the Agenda had listed the year as 2010 instead of 2011.

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**II. PLANNING DEPARTMENT REPORTS**

A) Rules & Regulations – Adopted Revision

Chairman Witham stated that the Planning Department had provided each member with a copy of the Rules and Regulations for the Board of Adjustment, with the adopted revisions, more specifically in regard to the role of alternate members. He felt that this was well done and covered all the intricacies. Mr. Feldman noted that Mr. LeMay had raised the question of what would happen if the alternate was not present at a subsequent meeting when an item was continued from a meeting at which the alternate sat as a voting member. He stated that the situation would be the same as if there were a regular voting member. If there were enough members present and the action went forward, then it could be heard. If the applicants or appellants did not want to be

heard without the alternate present, then the action could be postponed until the alternate was available. Mr. LeMay asked if that would be the same procedure with a regular member and Mr. Feldman confirmed it would be. Mr. Grasso stated that had also been his concern. Chairman Witham asked if this final edition had to be confirmed and Mr. Feldman advised that they had previously adopted the final revision.

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### **III. PUBLIC HEARINGS**

- 1) Case # 3-1  
Petitioners: Matthew J. & Sarah E. Curtin  
Property: 28 Kensington Road Assessor Map 152, Lot 25  
Zoning district: Single Residence B  
Description: To construct a new front porch and entryway.  
Requests: Variance from Section 10.521 to permit a building coverage of 22.6% where 20% is allowed.  
Variance from Section 10.521 to permit a front yard of 15'5" where 30' is required.  
Variance from Section 10.321 to allow the expansion of a nonconforming structure.

#### **SPEAKING IN FAVOR OF THE PETITION**

Mr. Matthew Curtin stated that he was the property owner. He noted that this was part of a variance approved in 2009. At that time, the requested variance called for a rear deck as well as this front addition. They constructed the rear deck but had not done the front addition so the variance lapsed for that portion. They were now asking for a re-approval of basically the exact plan. At the time the plan was done, they had looked at alternatives. It was an undersized lot and they wanted to have a design that would minimize the impact on neighborhood while allowing them to have the bath, porch and entry. He thought the total addition ended up being 85 s.f., very small. They were also mindful of the streetscape and the neighborhood aesthetic and believe the design conformed.

#### **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 Witham mentioned that a previous variance had lapsed and it was also his understanding that the applicant was unaware that they could have asked for a one-year extension.

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

Ms. Eaton stated that the applicants had been granted this variance in August of 2009 after reviewing all the criteria. There was a slight discrepancy in that the original variance was for an 18'2" front yard setback where 30' was required and this was for 15'5". The discrepancy depended on whether or not the stairs were included in the calculations. Essentially it was the same physical variance, just different in the way that it was measured.

Ms. Eaton stated that granting the variance would not be contrary to the public interest. The addition was set far enough back from the road so that it would not negatively impact the neighborhood. The spirit of the Ordinance would be met as the property would be in keeping with the neighborhood. Substantial justice would be done because the homeowner could improve the use of the home with no harm to others. There was no evidence that the value of surrounding properties would be diminished. Ms. Eaton stated that the hardship was in the nature of the undersized lot. In this neighborhood, the homes were similarly set and there were similar changes but with this size lot, to do anything would require a variance.

Mr. LeMay agreed, adding that in terms of the neighborhood, the setback was being maintained. Even with this addition, the property would fit in with the area.

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

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- 2) Case # 3-2  
Petitioner: Eliza Hobson  
Property: 106 Spring Street Assessor Map 133, Lot 15  
Zoning district: General Residence A  
Description: To reconstruct a portion of the structure on the left side of the home.  
Requests: Variance from Section 10.521 to permit a 4'± side yard where 10' is required.  
Variance from Section 10.321 to allow the expansion of a nonconforming structure.

### **SPEAKING IN FAVOR OF THE PETITION**

Mr. Feldman stated, as a point of clarification, that the plans in front of the Board members were submitted that evening as a part of this application. Chairman Witham noted that they had previously received the floor plans and now had the elevations.

Attorney Bernard Pelech stated that he was appearing on behalf of the applicant, who was there, along with the architect. He stated that 106 Spring Street was a unique long and narrow lot. He indicated on the exhibit what was being proposed, which would make the property more conforming. What was highlighted in orange would be removed and replaced with what was outlined in green so that about 48 s.f. of nonconforming structure was being removed. He stated that the new addition was brought into the center of the back of the lot so it complied with side setbacks. The only reason the portion he indicated was there was to adjust a very steep stairway to the second floor in order to conform to code.

Attorney Pelech outlined the findings, resulting from the Malachy Glen and Chester Rod and Gun cases, that were needed to meet the tests for the public interest. He stated that the essential character of the neighborhood would not be changed. They would be removing 48 s.f. of nonconformance and make a stairway in compliance with the safety code so the public safety and welfare would not be threatened. The addition would be to the rear of the property and tastefully done so that the value of surrounding properties would not be diminished. Regarding the hardship criteria, Attorney Pelech stated that there were special conditions in the property. A hardship was created by the fact that they had a very large structure running 3.7' to 4.1' along the side property line for many years. They were partially extending the building but actually removing more of the encroachment into the side yard than they were building. He stated that granting the variance would not interfere with the rights of abutting properties or the rights of others so no fair and substantial relationship existed between the purposes of the Ordinance and its application to this property, which was constructed well prior to the Zoning Ordinance. Attorney Pelech stated that justice would be done as there would be no benefit to the public in denying the variance while it would result in a hardship upon the owner and applicant.

In response to a question from Chairman Witham, Attorney Pelech confirmed that the actual addition in the rear, which he indicated on the plan, was in compliance and not a part of this variance request. Chairman Witham stated that there was a section of the back corner of the house which was going to have the walls rebuilt in the existing location and the roofline would come up a few feet. Attorney Pelech stated, "correct, to make the stairway comply with code." Chairman Witham stated there was probably an area 7' x 8' that would have a slightly higher roofline. From the elevations, it looked like the sidewall jumped up 3'. Mr. Peter McElroy identified himself as the purchaser of the property, which would close on April 11, 2011. In terms of the side wall, he pointed out on the elevation where the side wall currently stopped and stated that the Chairman was correct in saying that they were raising that shed dormer slightly. However, he believed the existing wall ran 16' from the original home and they were cutting that back substantially to around 7'. Mr. Paul Kendrick identified himself as the architect for the project and added that, with regard to the height, they were removing an existing dormer at that back area that allowed the old stairway to access the third floor. The new shed dormer would be substantially lower so, even though the wall went up a little higher, the net height was lower. When Mr. Jousse noted that they would keep the exterior trim in conformance with the existing residence, Mr. McElroy stated their intention was to replicate the feel and look of the existing structure.

### **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 what was in front of them was a portion of the house on the left side that was being reconstructed to allow a more code compliant stairway to get up to the third floor. As was mentioned, the expansion in the back was not in front of them.

Mr. Grasso stated that the variance would not be contrary to the public interest. He thought there was no real public interest in a code compliant internal stairway but it would definitely be a benefit to the homeowner. The spirit of the Ordinance was observed as they were maintaining the line of the house with no further expansion. They were actually removing part of the area so it would become slightly more conforming. He stated that substantial justice would be done and there would be no great benefit to the public in denying this variance. Mr. Grasso stated that the value of surrounding properties would not be diminished. Regarding the hardship test, he stated that this was a fairly narrow lot. Down along the street, he believed it was about 43' wide. The lot was deep and narrow so that, on the side in question, almost anything that the applicant wanted to do would have to come before the Board. He felt this was tastefully presented and the variance should be granted.

Mr. Parrott stated that he concurred.

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

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3) Case # 3-3

Petitioner: Portsmouth Housing Authority

Property: 40 Wedgwood Road

Assessor Map 239, Lot 12

Zoning district: Garden Apartment/Mobile Home GA/MH

Description: To construct a 208 s.f. office addition to the front of the existing structure.

Request: Variance from Section 10.521 to permit a 16' front yard where 30' is required.  
Variance from Section 10.321 to allow the expansion of a nonconforming structure.

### **SPEAKING IN FAVOR OF THE PETITION**

Mr. Geoff Aleva stated that he was representing the Portsmouth Housing Authority and referenced the memorandum they had provided to the Board regarding the project. This site had been developed as a public housing project in 1957 and included 124 units of residential public housing with space for maintenance, office and community rooms. In 1960, the road had been deeded to the City of Portsmouth for maintenance which created a nonconformance. At that time, the front setback was 15' which put the fronts of all the buildings into the setback. That setback was now 30'. Mr. Aleva referenced the exhibit on display stating that their current project was the addition of a 208 s.f. office enclosure, of which only 81 s.f. was new coverage. They had been approached by the Housing Authority to address their concerns with providing enough private meeting space. Right now, there was a very small room which was not secure or private. The entryway into the building was also not secure. If disgruntled tenants came in, there was nowhere for staff to go to be secure except into a bathroom. The proposal would add a larger waiting room, a secure and private meeting room, a security door and a transaction window. He noted that what was not under review was the need for an ADA ramp. Mr. Aleva reiterated that only 81 s.f. of the 208 s.f. addition was new coverage and, of that, 50 s.f. was impervious area. They had provided a picture so the Board could see what was going on with the stairway. It was being enclosed to provide

easier access and better usage of space. The nonconformance would not be increased. They would stay in line with the existing building and the style would match.

Mr. Aleva stated that, in the public interest, this office addition would provide a safer environment for staff and tenants. It would allow the staff to stay on site to manage the property. The architecture would match the existing structure. Granting the variance would be in the spirit of the Ordinance. The nonconformance, which was created after this public housing development was built, would not be increased by this building addition. He stated that substantial justice would be done by providing a safer environment for private meetings between the office manager and tenants as required by HUD, Section 4. The value of surrounding properties would not be decreased as this small addition would be in the same style as the existing structures and would blend right in. The ADA ramp would be a benefit. Regarding the hardship, Mr. Aleva stated that they had looked at different options and realized that they had to build a small addition when the nonconformance question came up. Again, the nonconformance was created 50 years ago when the roadways were deeded over to the City for maintenance.

When Mr. Jousse asked if the addition was coming any closer to the property line, Mr. Aleva demonstrated how the addition would follow the existing building. He pointed out the location of the 30' setback, noting that even the 15' setback would have cut off the fronts of the whole line of buildings.

#### **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. Jousse.

Mr. LeMay stated that this was a fairly simple infill, noting that there was an existing nonconformance. He didn't believe there would be any injury to the public interest by this variance. In fact, a more compliant ADA access to the building was in the public interest. He stated that granting the variance would observe the spirit of the Ordinance. The use was unchanged by the variance and the neighborhood was unchanged. He thought the variance would do substantial justice. It would allow modernization, improve security and improve privacy for the applicant. He had heard nothing to indicate that the value of surrounding properties would be diminished. With respect to unnecessary hardship, he thought it was created by the history of the parcel in that it was pre-existing and the fact that it was deeded over to the City, suddenly becoming nonconforming based on setback lines.

Mr. Jousse stated that originally the property would have been conforming except that the City changed the setbacks and made all of the properties nonconforming. As far as diminished value, Portsmouth Housing owned the rest of the surrounding properties so, if they were diminished, they would only be hurting themselves.

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

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- 4) Case # 3-4  
Petitioners: Michael Delacruz c/o the Franklin Block-CDB, owner, Bryan Trudel, applicant  
Property: 148 Fleet Street (63 Congress Street) Assessor Map 117, Lot 5  
Zoning district: Central Business B  
Description: To construct a sign projecting over the sidewalk.  
Request: Variance from Section 10.1253.50 to allow a projecting sign to project more than one-third the width of the sidewalk.

**SPEAKING IN FAVOR OF THE PETITION**

Mr. Bryan Trudel stated that the sidewalk on the Fleet Street side of the Franklin Block was far narrower than on Congress Street which, under the Ordinance, would limit his sign width to about 2'. He wanted to file for a variance because he felt it was detrimental to have a sign smaller than others on the building. He stated that they were only asking for about 6" in the total width of the sign and it would still be 12' off the ground. He knew that the spirit of the Ordinance was to have a sign that did not impact on pedestrian or street traffic and the 12' would allow that access.

In response to questions from Chairman Witham and Mr. Jousse, Mr. Trudel stated that his sign was 4" shorter than the sign next door and confirmed that they would use the existing bracket. Mr. LeMay asked if there were a violation on the property at that time. Mr. Feldman stated that the history had indicated that a variance request for a driveway had been postponed indefinitely and the petitioner had not come back. He didn't know that there was any outstanding violation and a variance had never been granted. Chairman Witham and Ms. Eaton remembered the issue and felt it was not applicable.

**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. LeMay.

Mr. Grasso stated that the applicant needed a sign to identify his location which would be 30" wide plus 6" off the building. He noted that on the Fleet Street side of the building, the sidewalk was very narrow. The Ordinance allowed 23" and they were seeking 13" larger than allowed, but it appeared to be of like size to others on the building.

Mr. Grasso stated that it would be in the public interest to have a sign identify locations particularly on a narrow street. He felt that having the sign 12' off the ground would observe the

spirit of the Ordinance. In the justice balance test, there would be no benefit to the public in denying the variance, but it would benefit the general public to know where this business was located. Mr. Grasso stated that the value of surrounding properties would not be diminished. The hardship test was that the applicant was intending to use an existing bracket which was located above the window level and was where it needed to be to identify the business.

Mr. LeMay added that he thought the Ordinance created a little difficulty in this case. It provided a guideline but when you had a case such as this narrow sidewalk, it was probably not unreasonable to grant a little relief. He noted that the sign would be in line with others in the area.

Mr. Jousse stated that he would support the motion, although he was not an advocate of signage. This sign was basically for foot traffic. What was being requested was appropriate and needed by the business to attract business.

Mr. Parrott stated that he thought the one third rule specified in the Ordinance was a good guideline and should normally be enforced. In this case, 5’8” was an unusually narrow sidewalk and he felt it justified a deviation from the standard.

Chairman Witham commented that this was the third such petition in a row, but he felt the sign was appropriate in size and scale. In this case, a sign that would meet the requirements of the Ordinance would not be effective. Based on what was already on the street, he didn’t feel that the essential character of the neighborhood would be changed.

The motion to grant the petition as presented and advertised was passed by a vote of 5 to 1 with Ms. Eaton voting against the motion.

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Chairman Witham announced that Mr. Durbin was now sitting for the final three petitions.

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5) Case # 3-5

Petitioners: Brady J. Byrd & Brian L. NESTE

Property: 184 Walker Bungalow Road

Assessor Map 223, Lot 19

Zoning district: Single Residence B

Description: To construct several additions to the structure.

Request: Variance from Section 10.321 to allow the expansion of a nonconforming structure.

Variance from Section 10.521 to allow a 20’± rear yard where 30’ is required.

Variance from Section 10.521 to allow a 5’± front yard where 30’ is required.

**SPEAKING IN FAVOR OF THE PETITION**

Mr. Shannon Alther stated that he was with TMS Architects and was there with the owners and one abutting neighbor. This project had come before the Board in 2009 for a larger renovation which had a garage extending to well within the side setback. He pointed out on the plan on



display the upper left corner representing the 2009 application, which was not granted. They could see the garage 4' away from property line.

Mr. Alther stated that they were there that evening with a revised version. The new proposal, as shown in the lower left hand corner, was basically adding in a couple of addition pieces that were no greater than the existing setback. Currently, the existing building at its closest point to the side setback was about 20.8'. They would like to add a little addition, shaded in blue on the plan, that would come no closer than 20.8' so it would still be consistent with what was already there. They would also like to add a couple of second floor elements within that building footprint. Mr. Alther noted that this particular lot was almost a three sided lot and a good portion of the owner's property was part of the roads. While it was an approximately 15,000 s.f. lot, only about 10,800 s.f. was usable so there was a good 4,000 s.f. associated with roadway.

Mr. Alther stated that what they had come up with was a plan that would blend nicely with the neighborhood and fit in the existing footprint other than one little spot that they wanted to add that was encroaching in the side setback. He stated that there was a unique front yard setback since the property line did go into the road. Typically it was a 30' setback, but in this case they were able to go to the center line of the road and then go 25' from that line to the building. On the front side, it just met the edge of the building which led to the request for the front variance. Although it said 30' for this particular section, because the road was part of the property line, 25' was allowed. This project was definitely not larger than what was previously presented and they felt it met the five criteria in the sense that it was not contrary to the public interest. Again the roads played a big role in determining what could be done in this project. Mr. Alther stated that the enforcement of the ordinance would create an unnecessary hardship. Again, the roads were part of the lot and limited what they wanted to do so that they felt that their plan was consistent with the Ordinance. Substantial justice would be done by granting this variance. They also think that by increasing the value and aesthetics of the property they would actually increase the value of the surrounding lots.

In response to questions from Mr. Jousse, Mr. Alther stated that they would be leaving the existing stairs in the back and in between would be a canopy to help with weatherization.

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

Mr. Joseph Onosko stated that he would be the abutter affected and was completely in support of the plan. He advised Mr. Parrott where his house was located, indicating that the distance from his house to the common property line was 120' to 150'.

Mr. Jousse asked for clarification from the architect regarding the light and dark blue shaded areas on their plans. Mr. Alther stated that the dark area was the new proposed stair component and the lightly shaded area within the red box was to outline the area that would be affected within that 20.8' setback. Mr. Parrott asked what the highest point, less the chimney, would be from grade and Mr. Alther responded that on the east side it was 27' to 28' and on the back another 3' or 4'.

Mr. Paul Messier stated that he lived at 171 Walker Bungalow Road and had no objections. He looked forward to the improvements.

With no one further 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 Ms. Eaton.

Mr. Jousse stated that, although he had voted against the previous proposal, this was much smaller in scope. He stated that granting the variance would not be contrary to the public interest. This was in a remote part of the City and of no interest to the general public. Substantial justice would be done and nothing negative had been presented as to the value of surrounding properties. He stated that the hardship was in the size and shape of the lot. This was one of the few lots in the City with streets pretty well on three sides of the residence. The applicant was requesting to fill in one of the back corners and, even though it seemed big looking at the plan, it was a very minimal request and did not infringe on the setback any more than the current residence.

Ms. Eaton added that the encroachment was very minor compared to the required setbacks which were unique and had to be defined from Walker Bungalow Road. This was a case of what would be a reasonable setback and this proposal met that requirement.

Chairman Witham stated that the setback situation was very consistent with what was along the street. The main effect would be on the neighbors to the rear of the property and there would be a good distance from the proposed addition to the structure on that property.

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

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- 6) Case # 3-6
  - Petitioners: Jonathan and Megan Parker
  - Property: 31 Sherburne Avenue Assessor Map 113, Lot 15
  - Zoning district: General Residence A
  - Description: To construct a vertical expansion of the residential structure.
  - Requests: Variance from Section 10.521 to permit a rear yard of 15.3’ where 20’ is required.
  - Variance from Section 10.321 to allow the expansion of a nonconforming structure.

**SPEAKING IN FAVOR OF THE PETITION**

Mr. Jon Parker stated that he was the property owner. They were looking for a variance so that a bedroom could be added above existing space. They wanted to build a code compliant staircase to the third floor replacing an existing dangerous stairway. In order to do that, they would be losing a bedroom in the middle of the property. He stated that they would be expanding over an existing footprint in the middle of the property and noted that they had gone to great lengths to make the property more conforming. In November, they had received approval for a lot line revision from the Planning Board where they increased the square footage of their lot from approximately 5700

s.f. to 7300 s.f. and a 15.37' x 100' section was added to their property. When Mr. Grasso asked about the status of the shed, Mr. Parker stated they would be removing 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. Parrott made a motion to grant the petition as presented and advertised. Mr. Grasso seconded the motion adding a stipulation from the departmental memorandum, which he read into record as, “Prior to the issuance of any building permit under this variance, and in any case no later than May 31, 2011, the existing shed shown as “to be relocated” on the “Boundary Line Agreement & Lot Line Relocation Plan” approved by the Planning Board on November 18, 2010, shall be either relocated in full compliance with the Zoning Ordinance or removed.” Mr. Parrott agreed to the stipulation.

Mr. Parrott stated that he felt the public interest was here defined by the immediate neighbors and there was no one to speak in opposition, or any reason to conclude they would oppose the proposal. He stated that the spirit of the Ordinance was to encourage property owners to make their homes more usable as long as no neighbors were hurt, which they were not. In the justice balance test, there was no interest of the general public that would weigh against granting the applicant’s request. Mr. Parrott stated that this appeared to be a nice upgrade which seemed unlikely to have any negative effect on the value of surrounding properties. The special conditions of the property creating a hardship were the configuration of the lot and the way the house sat on the lot which restricted the possibilities for expansion. If the variance were not granted, a part of the house would become essentially not usable. The small lot size was partially rectified by a relocation of the property line which, along with the removal of the shed, would bring the property into greater conformance.

Mr. Grasso added that granting the variance would allow the necessary internal renovations for access to the third floor and allow the homeowners to stay in their home.

The motion to grant the petition as presented and advertised, with the stipulation read into record when the motion was made, was passed by a unanimous vote of 7 to 0.

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Ms. Eaton stepped down for the next petition.

- 7) Case # 3-7  
Petitioner: Stephen and Karin Barndollar  
Property: 120 Ridges Court  
Zoning district: Single Residence B  
Description: To construct a free-standing solar panel array.  
Assessor Map 207, Lot 61

Request: Variance from Section 10.521 to permit a structure with a 5' front yard where 30' is required.

### **SPEAKING IN FAVOR OF THE PETITION**

Mr. Oliver Sheraton stated that the applicants wanted a solar energy system, which he would install. He stated that anywhere in that area would be within either a side, front or shoreland setback so the idea was to pick a spot that would be the least obtrusive to any neighbors or the public.

Mr. Grasso asked why this couldn't be moved away from the property line and not need a variance. Mr. Sheraton responded that it was also within the shoreland setback so no matter where, it was going to be sitting in that southern area. There was no technical reason to not do that, but they felt this was the best and least obtrusive spot.

Mr. Jousse asked Mr. Feldman why they were not seeking a variance for the shoreland setback. Mr. Feldman stated that when the Ordinance changed in January of 2010, the requirement was changed to a conditional use permit to be considered by the Conservation Commission and the Planning Board. When Mr. Jousse asked if they had a green light from either, he stated they did not but were seeking a variance first. Mr. Jousse stated that he walked the property and it seemed to him that there were ample other places to locate this solar panel including the roof of the house. He asked why it was not placed there. Mr. Sheraton stated that the flat part of the roof was too shaded in the afternoon. It would be difficult to attach the panel to the upper roof because of its convex shape and orientation. They had looked at the western part of the property but it was felt that behind the house would be the least intrusive to neighbors.

Mr. Parrott, noting that Mr. Sheraton had said it couldn't be done, stated that the roof seemed fairly new and up to code and asked if a structural engineer had said it was physically impossible for the panel to be put there and for what reason. Mr. Sheraton responded that, when the sections were curved and then going off to the back side, it was difficult trying to fit any solar panels on there. Functionally, it wouldn't produce what it should produce installed on a roof. A lengthy discussion followed between Mr. Parrott and Mr. Sheraton about the characteristics of the roof and whether the array in exactly the same configuration could be placed there. Mr. Parrott maintained that the array could be placed in that location and posed detailed questions to Mr. Sheraton about why they felt the placement was not possible. Mr. Sheraton ultimately stated that what it came down to was that you could figure out a way to place the array on the roof, but it wouldn't produce nearly what it should. Chairman Witham stated that what was not coming across clearly was that the curved roof was not due south. Mr. Sheraton stated that the curve was going from east to west so that you had to try to put it somewhere on that flat roof. Mr. Parrott stated that his position was not that it had to be re-orientated. The structure could be braced and be in the exact same orientation as it would be in the yard. In conclusion, Mr. Parrott reiterated that he would like to see a report from a structural engineer; Chairman Witham stated that he believed the presenter had answered as best he could; and Mr. Sheraton restated that to produce reasonable results, the array would be best on the ground.

### **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 Witham asked what the response had been from the neighbors.

Mr. Stephen Barndollar stated that they had originally thought they would put solar panels in the west part of the property but there were problems with the wetlands and negative reaction from several neighbors due to having the tree cover cut. There had been no objection from the neighbors across the way to this location. He stated that his answer to Mr. Parrott's questions was that structurally they could put a pedestal on the roof, but as it was proposed in the ground, there would be a steel/concrete brace and a lot more support. They hadn't looked at the curved roof once the engineer had looked at the orientation of the roof and the curvature. The pedestal could be moved further west toward the center of the property and the seawall was going to be restored with DES approval that had been given. As far as going on the building, the cost would be prohibitive and there would be a wind factor. It just wouldn't be efficient. Mr. Jousse asked why the array couldn't be placed on top of the boathouse. Mr. Barndollar stated that would have been perfect and they had looked at it but it was an east/west orientation on the roof so it wouldn't work from the standpoint of its exposure.

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

Mr. Parrott stated that this property, as had been demonstrated, was very favorably sized. There's was a lot of room and there should be a lot of different alternatives to locating this 10' x 15' array. He suspected that this project could be favored by some engineering work to look at alternatives. To ask for a 5' setback for a structure on such a large lot with many other alternatives didn't seem reasonable. They could easily move the array toward the middle of lot and avoid the business of variances, not to mention the roof.

Mr. Parrott stated that he thought it would be contrary to the public interest to grant a variance on such a large lot where there were other available alternatives. If this same structure were a 10' x 15' and 12' high shed, he didn't think they would really take very long to consider it as inappropriate and this was just a structure of a different nature. He felt that the spirit of the Ordinance in this case was to explore all alternatives to come up with the same result which was desirable. It was just the execution of the idea in this case that left something to be desired. In this case, he thought it was hard to define what substantial justice was but moving the structure to another location would be no hardship on the owners and, with the right kind of design work, they might be much happier with the result in the end. He stated it that it was hard to judge the impact on the value of surrounding properties as there was no testimony one way or the other. The unnecessary hardship normally applied to a very small or confined lot, or an odd shaped lot but, in this case, they didn't have those particular conditions. He thought this property did not have any negative special conditions that distinguished it from other properties. It was a very large lot but that was a good special condition. He felt the owner could take advantage of that and achieve the same result.

Mr. Grasso stated that a variance request had to meet all the criteria and he was stuck on the hardship test. The Board tried to grant a minimal variance where there were little other options for the homeowner to pursue but there were other options on this property to locate the structure.

Mr. Jousse stated that he was not satisfied that this was the best location for this particular unit. There could even be two sections of 4 panels or in several pieces with the same end accomplished. He was not telling the applicants where to put it, but he would look at the top of the boathouse. It didn't have to be on a pedestal, but could be on four legs and orientated any way they wanted it. The same thing could be done on the main house. He agreed the southern orientation was the best and the west side was shady for a solar panel but there were other spots where they could get the best results.

Chairman Witham stated that he wouldn't support the motion. His experience with dealing with solar installations was that, once you threw in a little bit of shade, that efficiency dropped so much that you didn't break even. Orientation was key and installation on roofs was more expensive. He felt that installation on the house or boathouse would be of more concern to neighbors. They had tried one other location, which had met with objections so they flipped it to the other side and had none. This was not a typical front yard setback as the street didn't even go down that far. Chairman Witham concluded that it was easy to say they had a big lot and should find another spot but was that reasonable. He felt this proposal could meet the criteria.

The motion to deny the petition was passed by a vote of 4-2 with Chairman Witham and Mr. Durbin voting against the motion.

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#### **IV. OTHER BUSINESS**

There was no business presented.

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#### **V. ADJOURNMENT**

It was moved, seconded and passed by unanimous voice vote to adjourn the meeting at 8:40 p.m.

Respectfully submitted,

Mary E. Koepenick  
Administrative Clerk