MINUTES OF THE BOARD OF ADJUSTMENT MEETING
PORTSMOUTH, NEW HAMPSHIRE

MUNICIPAL COMPLEX, 1 JUNKINS AVENUE

EILEEN DONDERO FOLEY COUNCIL CHAMBERS

7:00 p.m. **September 18, 2012**

MEMBERS PRESENT: Chairman David Witham, Vice-Chairman Arthur Parrott, Susan Chamberlin, Derek Durbin, Charles LeMay, Christopher Mulligan, David Rheaume, Alternate: Patrick Moretti

MEMBERS EXCUSED: Alternate: Robin Rousseau

The following Item I, Item II and Item III, Case #9-1 were approved as an Excerpt of Minutes at the November 20, 2012 Board of Adjustment Meeting.

(Beginning of Approved Excerpt)

I. APPROVAL OF MINUTES

A) May 22, 2012

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

II. OLD BUSINESS

A) Case # 7-7
Petitioner: Eugene C. Hersey
Property: Off Dodge Avenue
Assessor Plan 258, Lot 42
Zoning District: Single Residence B
Description: Construction of a single-family home on a lot without continuous street frontage and no access to a City street.
Requests: 1. A dimensional Variance from Section 10.521 to allow a single-family dwelling on a lot with insufficient (12,200± s.f.) lot area where a minimum lot area of 15,000 s.f. is required.
2. A dimensional Variance from Section 10.521 to allow insufficient lot area per dwelling unit (12,200± s.f.) where a minimum lot area per dwelling unit of 15,000 s.f. is required.

3. A dimensional Variance from Section 10.521 to allow a single-family dwelling on a lot without street frontage, where 100' of continuous street frontage is required.
4. A Variance from Section 10.512 to allow a single-family dwelling on a lot with no access to a City street.
(This petition was postponed from the July 24 and August 21, 2012 meetings)

DECISION OF THE BOARD

Mr. Mulligan moved to postpone the petition to the May meeting, as requested by the applicant. Vice-Chairman Parrott, seconded and the motion passed unanimously, 7-0

III. PUBLIC HEARINGS

1) Case # 9-1
Petitioners: Henry & Jacqueline Brandt
Property: 37 Wholey Way
Assessor Plan 237, Lot 76
Zoning District: Single Residence B
Description: Appeal from Administrative Decision of the Code Official.
Request: 1. Appeal under Section 10.234.20, Section 10.234.30, Section 10.1013.10 and Section 10.1017 from the decision of the Code Official that a conditional use permit is required to build upon a lot created by a lot line adjustment in August 2011. (*A rehearing was granted on this petition at the August 21, 2012 meeting)*

Chairman Witham noted that the following petition was a result of a rehearing granted at the August 21, 2012 meeting.

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernard W. Pelech stated that he was appearing on behalf of the applicants who were there, along with Salmon Falls Holding Company. Mr. and Mrs. Brandt owned two contiguous lots on the corner of Wholey Way and Echo Avenue. On December 29, "2009" (sic)[1], the Brandts and Salmon Falls Holding Company submitted a lot line adjustment application to the Planning Board. This would have made the lots conforming as to size and frontage and meeting all the requirements of the Zoning Ordinance. The request was denied by the Planning Board at the January 15, 2009 meeting and the decision was appealed to Superior Court. At a hearing in Rockingham County Superior Court, a ruling was made that this had been denied unreasonably and the matter was remanded back to the Planning Board for a new hearing. He stated that, on January 1, 2010 between the time of the original denial and the time of the rehearing, the Zoning Ordinance was changed reducing the size of jurisdictional wetlands from a half acre to 10,000 s.f. He felt that was critical, as in the case of these two lots, the wetlands area was greater than 10,000 s.f. but less than half an acre. Under the old Ordinance, there would be no required setback from the wetlands. Under the new Ordinance, a conditional use permit would be required.

[1] Clerk's Note: The actual date of submittal, as indicated in documentation submitted to the file, was December 29, 2008.

Attorney Pelech stated that on August 18, 2011, they went back to the Planning Board on their remanded subdivision/lot line adjustment request and the Board granted preliminary and final subdivision approval, in other words he stated, granting the lot line adjustment request. The Planning Board placed a provision on that approval which stated that the applicant had to add the following note to the plan: *"A building permit on Lot 64* (which, he interjected, was the newly created lot with a buildable envelope on it which met all of the requirements of the Zoning Ordinance) *shall be governed by the Zoning Ordinance, Building Code and Planning Board Regulations in effect on the date of issuance."* He interpreted that condition to mean that the new Zoning Ordinance of 10,000 s.f. jurisdictional wetlands would apply rather than the old Ordinance, of one half acre. The applicants had appealed that decision to the Superior Court, which appeal was still pending.

Attorney Pelech stated that the applicants then made an application for a building permit and they were there that evening to appeal the decision of Mr. Cracknell and the Planning Board that a conditional use would be required prior to the issuance of a building permit. As previously stated, it was the applicants' position that the Ordinance in effect when this subdivision approval was granted was the Ordinance in effect when they had filed their request in December, "2009" (sic)[1] and which stated that jurisdictional wetlands of less than half an acre did not require a setback, or conditional use permit. However, due to the changes, the applicants were being told by the Planning Department and the Planning Board that it was required, which he reiterated was the substance of their appeal.

Attorney Pelech stated that, prior to the Planning Board approving the lot line relocation / subdivision plan, City Attorney Sullivan had provided written memoranda indicating that, because the petitioners' application was accepted and acted upon under the old Ordinance, the subdivision application on remand from the Superior Court would be governed by that Ordinance and not the new. Referring to his submitted packet, he noted that there were a number of exhibits, which he listed as the following:

1. A letter to him from Attorney Sullivan dated July 7, 2010, after the remand and after the new Ordinance went into effect, from which he quoted a statement from Attorney Sullivan that the Zoning Ordinance in effect prior to January 2010 was that which applied on remand.
2. A letter to him dated August 9, 2010 in which Attorney Sullivan stated, *"…this will advise that it is my opinion that the original Brandt subdivision* (Wholey Way) *is vested under RSA 674:39."*
3. A memorandum from Attorney Sullivan dated November 20, 2009 in which he stated that on that same date the City Council posted a notice of second reading of the revised Zoning Ordinance which provided that, after the notice of the public hearing had been posted and before the effective date of the revised ordinance, a building permit could be issued only if it were in compliance with both the existing and the revised Ordinances. Attorney Sullivan continued that the requirement for compliance with the proposed revised ordinance did not apply to certain building permits, which he listed as including, "*A structure shown on a plan or application for which the notice of a public hearing by the Planning Board (such as for site review approval) was posted prior to November 20, 2009."* Attorney Pelech

[1] Clerk's Note: See footnote on Page 2.

stated this applied in their case and quoted additionally, "*Generally, once the Council has taken final action on the new ordinance, no building permit will be issued that is inconsistent.*" Attorney Pelech stated that Attorney Sullivan had added that the memorandum was intended to be a general guidance and, accordingly, statements of law had been generalized.

4. A copy of RSA 677:19 dealing with decisions based on Invalid Ordinances, which Attorney Pelech felt was critical to this case, particularly the section, "*that the application should have been approved but the ordinance was amended to prohibit the type of project applied during the pendency of the appeal, notwithstanding the fact that the ordinance may have been amended to remove the invalidity subsequent to the initiation of the appeal or that the type of project applied for is no longer permitted*," which he interjected was the case with the Brandt appeal, "*..the court shall, upon request of the petitioner, issue an order approving the application, provided that the court finds the application complies with valid zoning and subdivision regulations existing at the time of the application*."
5. A letter from the Planning Board regarding its August 18, 2011 decision which said that the Planning Board had approved the subdivision, however with the Condition Precedent 1(e) that he had quoted earlier in his presentation and which was the reason they had appealed to the Superior Court.
6. The September 2011 appeal of the Planning Board decision, which set forth why they were aggrieved by the decision. Attorney Pelech stated that was also why they were there that evening, as case law in the State of New Hampshire required that the applicant exhaust their remedies before going to the Superior Court or lose their right to appeal. Their final remedy in this case was to appeal to this Board the decision of the Planning Department that they must comply with the new Ordinance and obtain a conditional use permit.
7. The 2009 notice of decision when the Superior Court remanded the case and said there was no basis for the Planning Board to deny the application.

Noting that they would try to answer any questions, Attorney Pelech stated that they would like to move forward, either in Superior Court or, if the Board found that the old Ordinance applied, they could go forward without a conditional use permit.

Mr. Mulligan asked what would happen to their appeal of the Planning Board decision if they received their requested relief that evening. Attorney Pelech responded that they would immediately withdraw the appeal as they would not need the conditional use permit and would go forward with the building permit application.

Referencing his citation of some memoranda from the City Attorney, Mr. Parrott asked if it was Attorney Pelech's position that the City Attorney could direct the Planning Board to do anything, or not, or override anything that they did. Attorney Pelech stated, "Absolutely not," adding that he didn't believe he stated that. The Planning Board were a "quasi judicial" body and the City Attorney could not direct them to do anything. He agreed when Mr. Parrott stated that, then, when the City Attorney wrote a memorandum, he was essentially stating his opinion.

Mr. Parrott asked if, when this went to Superior Court, the court could have granted the requested subdivision or lot line change outright. Attorney Pelech responded that they could do three things: Affirm the decision of the Planning Board; Reverse it, which would have the effect, although they

would have to state it in their decision, of granting the lot line relocation; or they could do what the court did in this case, remand it back to the Planning Board.

Mr. Parrott asked if it was fair to say that, because they failed to grant it, they found some flaw or they weren't persuaded of the weakness of the argument of the City. Attorney Pelech stated that in the decision of Judge Nicolosi in 2009, she found no valid basis for the Planning Board to deny the lot line relocation and further indicated that the applicant should have had the opportunity to present additional evidence with regard to the wetlands if the Planning Board wished. He stated that was why it was remanded for additional inquiry from the Planning Board on the wetlands issue only.

Referencing the note that the Planning Board had put on the plan, Mr. Parrott asked why, if there was a perception that this was, in fact, an administrative decision of somebody as opposed to a valid action of that Board, an appeal hadn't been taken at that time. Attorney Pelech responded that an appeal of the Planning Board decision had been filed within the 30 days required by law and that appeal was presently pending in Superior Court. When Mr. Parrott indicated he meant with respect to an appeal to a City Board, he stated that the applicant in a Planning Board decision was entitled to appeal directly to the Superior Court if the decision did not specifically indicate that they were interpreting the Zoning Ordinance. He stated that was the case in this instance. The Planning Board had simply asked that they revise the plan so they did not file an administrative appeal with the Board of Adjustment but directly appealed to the Court.

The discussion between Mr. Parrott and Attorney Pelech continued for a brief period, with Mr. Parrott asking if it were not the more common course of action for a party disagreeing with the action of one of the Boards to go back to the Board and request that it be looked at again. Attorney Pelech stated there was no provision to request a rehearing from the Planning Board and the only options those he had previously stated. He reiterated their reason for not coming then to the Board of Adjustment. Mr. Parrott asked if he was saying that the note, which was an unusual action of the Planning Board, was not an interpretation of the City of the new Ordinance and Attorney Pelech responded that, the way the decision was rendered, they did not feel it was.

SPEAKING IN OPPOSITION TO THE PETITION

Mr. Rick Taintor identified himself as the Director of the Planning Department. He referenced his memorandum dated September 13, 2012 noting that he disagreed with Mr. Pelech on the matter of the interpretation of the Planning Board's action. As noted in items 2 and 3 of his memorandum, the Planning Board decision was based on a memorandum from the Legal Department, co-signed by the City Attorney, which distinguished the applicable Zoning Ordinance for the subdivision from the Ordinance that would apply to any subsequent building permit that would come out of that subdivision. He stated that, as had been noted, the applicant could have appealed that Planning Board decision to the Board of Adjustment as it involved the "construction, interpretation or application of the zoning ordinance" under RSA 675:53. The appeal could have been taken at the same time as the appeal to the Superior Court and, in that case, it would have been a timely appeal. He added that the Planning Department's determination that a conditional use permit would be required was really a ministerial action implementing the previous decision of the Planning Board and not an administrative decision under the terms of the statute.

Mr. Taintor stated that he wanted to highlight a contradiction in the application, which stated that it was for a new dwelling on parcel #76, 37 Wholey Way, which already had a single dwelling on it. They couldn't apply at this point for a permit on lot #64 because lot #64 hadn't been created because the subdivision plans hadn't been recorded. In order for the plans to be recorded, and that lot to be created, they would either have to comply with the Planning Board stipulation or go through the process of appealing to the Board of Adjustment or the Superior Court for removal of the stipulation. He added that, in order for any construction to happen on the lot, the Board of Adjustment would either have to grant a variance from the limitation of one free-standing dwelling per lot or would have to grant a variance to put this house on the existing lot, #64, which was substandard and probably could not accommodate a house of that size.

Mr. Taintor noted that Mr. Pelech had referenced the Legal Department's memorandum and letters of July 7 and August 9, 2010 and Nov. 20, 2009. As stated in item 17 of his memorandum, these were irrelevant to the appeal at hand because they didn't have any bearing on the facts of this case. The memorandum from 2009 was specifically about building permit applications that were filed between notice of public hearing and enactment of the ordinance and, although the subdivision plan was in place at that time, there was no building permit application filed and so that memorandum had absolutely no bearing on any subdivision plan. The letters dated July 7 and August 9, 2009 similarly applied solely to the question of a subdivision. Mr. Taintor also noted that, in item 3 of the memorandum, reference was made to a subsequent memorandum from the City Attorney in August 2011 stating that any building permit application would be subject to the new Zoning Ordinance and that was why the Planning Board made the decision that they made.

Mr. Taintor stated in summary, that the lot line revision was not in effect yet so a building permit could not be issued for that lot without a variance allowing two dwellings on a lot. He added that, if the Board of Adjustment granted this appeal, the Superior Court decision would still need to move forward because an appeal to the Board of Adjustment of the Planning Board decision had not been taken within the required 30 days. Therefore, in order to change that note on the subdivision plan, the applicant would have to move forward with the appeal to Superior Court and, that application or that appeal to Superior Court was currently being stayed pending an application for a conditional use permit. There were a number of different ways to approach this, but basically it seemed that, first, in order to appeal to the Board of Adjustment, the appeal would have had to have been made within 30 days from the Planning Board decision which interpreted the Ordinance as requiring the conditional use permit and, secondly, that a subdivision plan had to move forward before any building permit could be granted on this parcel.

SPEAKING TO, FOR, OR AGAINST THE PETITION

City Attorney Robert Sullivan identified himself and noted that he was speaking neither for or against in connection with this complicated procedural matter. As they had heard, to some degree this case had created tension between the City's Planning Board and the BOA and between the administrative staff and the Board, the administrative staff having filed a request for a rehearing. In that complicated situation and contemplating that it was possible that the matter would not end that evening, he wanted to explain the role of the City's Legal Department.

Attorney Sullivan stated that they were not offering an opinion on the merits of the case before them. They were there for two reasons. The first reason was that there was significant involvement of the City's Legal Department and himself with this subdivision going back a

number of years. If they had questions about anything he had done, written, or of which he had personal knowledge, he would be happy to answer those factual questions. Secondly, whatever decision the Board made that evening, the position of the City's Legal Department was that they were correct and, an important point, that would continue to be their position going forward.

Mr. LeMay referenced Attorney Sullivan's August 9 memorandum where it said that, in his opinion, the Brandt subdivision was vested under RSA 674:39 and, subsequent to that, the Planning Board hearing occurred, at which point there was action on their part to essentially contradict that with respect to this particular detail. Attorney Sullivan agreed to the assessment of the opinion stated in his memorandum, adding that the subdivision, which he viewed to be vested, was the original Brandt six-lot subdivision, which had been approved and houses had been built. Mr. LeMay stated he understood but that went back on August 18, when it was reheard by the Planning Board and approved except that they added a condition. Attorney Sullivan agreed, reiterating that the original subdivision was vested and that the amendment that came forward was what the Planning Board ultimately approved as well, subject to conditions. Mr. LeMay stated that he was just trying to make sense of the time line and why they could say this was vested and would then do something contrary. Attorney Sullivan clarified that the original six-lot subdivision was approved, houses were built and it was vested. Then, at a later point, the applicants came forward with another subdivision request to create another lot in one of the lots of the original subdivision, which he restated was vested. Mr. LeMay stated that, then, if they had come forward trying to build a house on the unsubdivided lot, the earlier zoning would still apply. He continued that, if they were able to subdivide successfully, then regardless of the note that the Planning Board put on, the new zoning would apply to any building permits they requested and Attorney Sullivan responded, "right." The old Zoning Ordinance applied to the question of subdivision. The question of a building permit was a separate matter. Mr. LeMay added that it seemed to him that those things were getting mixed here and Attorney Sullivan agreed.

Mr. LeMay stated that, then, to reinforce the point, because there was a new subdivision, whether it was approved in "December" (sic)[1] of 2009 or even as late as 2011, the new zoning would apply to a building there and Attorney Sullivan confirmed his understanding. When Mr. LeMay asked if the point of the note on the Planning Board "application" (sic) was completely moot, Attorney Sullivan stated that the Board created that as a condition and that was in litigation. Mr. LeMay stated he understood, but if the note wasn't there, would it be the same effect because they would be putting in a building application presumably after the subdivision and it wasn't vested because it wasn't part of the original subdivision. Attorney Sullivan stated, "yes." Mr. LeMay stated he was trying to see if the note that was the point of all this contention was a superfluous note and Attorney Sullivan stated that was correct.

Chairman Witham asked when the first subdivision of the six lots occurred. Attorney Sullivan stated he didn't have the exact date but noted again that houses had been built and people were living in them. Chairman Witham stated that, after that first subdivision, they came with the subdivision plan of 2009 and that one ended up in court. Mr. LeMay agreed but the point was that, even if it was approved in "December" (sic)[1] of 2009, which the applicants were contending it should have been, and the court said yes, then when they did a building permit for that it would still be under the new zoning, not the old because it was a new subdivision. In other words, if they hadn't subdivided, then they would have had a lot to which they could apply the old rules.

[1] Clerk's Note: The date of the Planning Board meeting was January 15, 2009.

Mr. Parrott asked if it was fair to say that there was period of many years when the original subdivision plan could have been modified with respect to this particular lot and, under the previous rules, it wouldn't have been an issue. Attorney Sullivan stated there was a period of several years during which a further subdivision could have been requested. Mr. Parrott asked in a follow-up on Mr. LeMay's questions whether the note on the plan that they had all been discussing was a lawful action of the Planning Board and, depending on the answer, was it within the power of the Planning Board to make such a stipulation as to put a note on a plan. Attorney Sullivan stated that was precisely the issue that was in litigation and would be resolved in Superior Court. Mr. Parrott asked if he had a view as to whether it was a lawful note. Attorney Sullivan stated that his view was that his job was to represent the Planning Board and his position was that the Planning Board's action was lawful and reasonable. Mr. Parrott asked if he was right that his office, the Planning Department, the petitioners, everybody knew about the note at the time. Attorney Sullivan stated, "yes." Mr. Parrott continued, saying no action was taken on it to his knowledge within the 30 days and everyone knew about it. Chairman Witham stated that he thought it was within 30 days. Mr. Parrott maintained that they didn't go back to the Board of Adjustment although they could have done so. Chairman Witham stated that he believed that, once the note was added, it triggered a 30-day period and they did take action within 30 days. They had two options, come before the Board of Adjustment or go to court, which they had chosen, as they didn't feel like it fell under the Board's guidelines. That was why he didn't think they could say that the applicants didn't do anything within 30 days of that note.

Attorney Pelech stated that he appreciated Attorney Sullivan's statement that the Legal Department took no position for or against this application. He wanted to point out this was much different from what had happened two months ago when the Assistant City Attorney had argued on behalf of the Planning Department.

Mr. Henry Brandt identified himself as the property owner. He noted that there had been a lot of discussion about when various things were submitted and whether the time line was met. He stated that the normal process was for a property owner to receive subdivision of the land and then submit a building permit application. He felt they would all agree that it was not the normal procedure to submit the building permit application first and the subdivision request later. In 2009, (sic) [1] they had submitted the subdivision application, or lot line adjustment, if you would. Had that been approved, under the old Ordinance under which they had applied, the lot would have been created, the building permit would have been applied for and it would have been in complete compliance with the Ordinance at the time. He stated that the fact that it was denied, with their subsequent appeal to the court during which timeframe the zoning changed, was what now made this building permit nonconforming. They needed to keep in mind how this worked through the timeline. He maintained it was not like they went ahead and applied for the subdivision and then decided three years later, "Oh let's make an application for a building permit and, oh wow, the zoning has changed." He said that was not the way it happened. The reason for the delay in the submission of the building permit application was that they were going through the court process of getting the actual lot line adjustment approved. "..when it was approved and deemed by the court to be, should have been approved under the old zoning, we then came forward and submitted with a building permit and got caught up with this note that was on there, o.k.?"

[1] Clerk's Note: See footnote on Page 2.

Mr. LeMay asked when they had anticipated getting in the building permit request given the fact that they had to get the subdivision approval or the application before a building permit, and they applied on December 29 of 2009 (sic) [1]. Mr. Brandt responded that it would have been submitted as soon as the subdivision application had been approved. They would have had to submit the plans and get them signed and recorded. With the denial, they were essentially denied the ability to submit the building permit application.

Mr. Rheaume asked if they had tried to submit a request to the Planning Board for a conditional use permit that would be required under the new Ordinance. Mr. Brandt replied, "We have not done that, o.k." When Mr. Rheaume asked his reasons, he stated that, first, they didn't they were required to because their lot was governed by the old Zoning Ordinance, under which a conditional use permit was not required and, secondly, it was a costly process. Third, he felt it was questionable whether, given the layout of the lot and so forth, it would even by approved by the Planning "Department" (sic) after they went through all that. He stated, "If we're going to end up back in court, we'll let the Court answer all that as well. We don't feel we're required to and so that's the route we're doing with it."

Chairman Witham called for further comments and, hearing none, closed the public hearing.

DECISION OF THE BOARD

Chairman Witham stated that he had reviewed this and tried to simplify it as much as he could, which he would like to share with the Board. He noted that Attorney Pelech in his presentation had stated they were appealing the Planning Board and the Planning Department, but they were not doing both of those in this appeal. The appeal of the Planning Board, they were dealing with in court, so the Board was dealing with an administrative appeal of a decision made by Nicholas Cracknell of the Planning Department.

He stated that his take on this was to look at RSA 674:33 and what the powers of the Zoning Board of Adjustment were. He quoted that they could, "hear and decide appeals if it is alleged there is an error in any order, requirement, decision, or determination made by an administrative official in enforcement of any zoning ordinance." Attorney Pelech had stated that the applicants were appealing to the zoning board the decision of Nicholas Cracknell that a conditional use permit was required. Chairman Witham also cited, from their application to the Board of Adjustment, "Applicants/owners appeal the decision by the Planning Department that a conditional use permit is required."

Chairman Witham stated that he believed that the note that the Planning Board put on the plan triggered the conditional use permit being required and Mr. Cracknell did not make an administrative decision as an official. He didn't make any decision. He didn't make an interpretation of anything. He didn't make any error. All he was, he felt, was the messenger. The Planning Board made the decision and the Court was going to decide whether the note was worthy or not. It didn't really matter what the note said – it could have said all houses had to be painted pink and they came in for a blue house – the Court was going to decide whether it held water.

[1] Clerk's Note: See footnote on Page 2.

Chairman Witham continued that he felt the point was that the Planning Board made a stipulation and put it on the plans. Whether they agreed with it or not, Mr. Cracknell didn't interpret it, or go through zoning and try to decide what it meant, he simply told them, 'there's a note on here and you have to follow these rules'. He stated that part of that rule was a conditional use permit. He reiterated that they weren't there to decide the merits of the note itself and it was a fact that the note was on the plans. The applicants went for a building permit, which triggered the conditional use permit. He reiterated that all the Planning Department and Mr. Cracknell did was say, 'There's a note here. You need to do this,' and he didn't feel an error had been made. Chairman Witham stated that he didn't think there was any basis for the appeal. If Mr. Cracknell had made a determination and interpreted what the Planning Board meant by that note, that could be up for debate but, again, he was just the messenger in saying that a conditional use permit was required.

Chairman Witham concluded that he had tried to simplify the issue many other times and other issues were moot because what was being appealed to them was not the note and he didn't feel they were appealing what the Planning Board did. They were appealing Mr. Cracknell telling them what the Planning Board did. He asked for further discussion and then he would entertain a motion.

Ms. Chamberlin asked if his argument was that there was nothing to appeal because there was no separate event and the Superior Court that would decide the issue. Chairman Witham stated that was his opinion. He felt there was an event and what they were appealing was Mr. Cracknell telling them there was an event.

Ms. Chamberlin stated that she agreed. She had looked at it in two different ways. One was that the Board didn't have jurisdiction so there was nothing for them to rule on. The other thing she considered was that she had looked through all the materials and read the judge's order which said that, "because the wetlands issue was not adequately addressed, and may serve as a basis for denial, the matter is remanded for consideration of this issue." She stated that, if it was an issue, the Court has said that it may serve as a denial and, if that was the decision, that was the decision. In either case, you would be appealing it up to the Superior Court and they would rule on it. She noted that it was a confusing case and she could see it being interpreted exactly as Mr. Witham had described it, that there really wasn't an appealable event. Chairman Witham commented that, after spending a lot of time reviewing, that was the conclusion he came to.

Mr. LeMay stated that he thought the Chairman had the right analysis. It was where he had been going when he said it was about what Nicholas Cracknell did at this time, not what went on months and months ago. He felt, from an administrative standpoint, that Mr. Cracknell read the paper in front of him. Whether there was a basis or not, he had not made a judgment error. From a procedural standpoint, the Board had an application (sic) in front of them and in order to clarify the message of the Board, it would be appropriate to have a motion and accept or deny the application (sic). Chairman Witham agreed, noting that he would entertain a motion.

*Mr. LeMay made a motion to **deny** the application, which was seconded by Mr. Parrott.*

Mr. LeMay stated that this had all been pretty well discussed but the issue, despite all the conversation, was not about the condition that was placed on the plan back in August of 2011 but rather the recent action of Mr. Cracknell when the subject came up again. Mr. LeMay stated that Mr. Cracknell had executed his administrative responsibilities in conveying the information that

was in the official record and therefore, he made no errors in that regard and he didn't see that he made any judgments.

Mr. Parrott stated that he had come to the same conclusion but would put it a different way. The more he read this, he realized that this appeal was on a narrow basis of what was considered a decision, but he had to conclude that Mr. Cracknell did not make and announce an independent decision. He reacted and passed on in good faith the determination of the Planning Board which, after all, was the actionable authority just as this Board was. When all was said and done, he felt the land use boards had their say and, short of court, they had the final say so he would support the motion.

The motion to deny the appeal from the administrative decision was passed by a unanimous vote of 7 to 0.

(End of Approved Excerpt)

IV. PUBLIC HEARINGS – NEW BUSINESS

2) Case # 9-2
Petitioner: Judell L. Schlachter Rev. Tr. of 1995, Judell L. Schlachter, Trustee
Property: 140 Lincoln Avenue
Assessor Plan 113, Lot 5
Zoning District: General Residence A
Description: Construct a two and a half story rear addition.
Request: 1. A dimensional Variance from Section 10.521 to allow building coverage of 27.6%± where 25% is the maximum building coverage allowed.

SPEAKING IN FAVOR OF THE PETITION

Ms. Anne Whitney stated that she was the architect for the project and was representing the applicant. She presented the Board with a list of abutters who had reviewed the project and said they were fine with it. She also presented revised elevations for a two story and not a two and a half story addition.

Ms. Whitney said the home was built in 1926 and retained much of its original vintage interior. They were proposing a two-story, 15' x 17' addition at the rear of the structure to create more kitchen and living space on the first floor and a bathroom and support space on the second floor. She reviewed the various components and improvements of the floor plan of the existing house and the addition. The attic was quite sizable and she initially considered bringing the roof peak of a two and a half story addition up to the existing ridge line to bring more light in, but revised it down to a two-story addition with a gable roof after talking with the neighbors to cut down the height. To bring in light, she added a dormer that was not part of the application because it wouldn't require a variance.

Ms. Whitney said the property was on a corner lot and the addition, which would meet the setback 13' from the left edge, was on the Sherburne Avenue side. The addition would also have a basement and they were adding a bulkhead. There was about 17' between the garage and the addition and they were also adding some steps to the one-story addition on the right.

Ms. Whitney included a tax map and the abutters for the first three houses on Sherburne Avenue and two on Lincoln Avenue lots 8 and 21, with Lot 20 a multi-family house. They had looked at the assessor information for lot size, which showed it was not unusual to have from 25% to 63%, 33%, and 29% lot coverage in this zone. A significant number of properties were already over the allowed coverage. They were asking for 27.6% where 25% was allowed. Ms. Whitney said they met or exceeded all the setbacks. The existing lot was 1,000 s.f. over what was required in the district and because it was a corner lot with 15' to the street, there was more light and air so the effect of 27.6% coverage was minimal. It represented 158 s.f. over the 25% that was allowed, but of that amount, 56 s.f. represented steps over 18", a bulkhead and an open porch.

Ms. Chamberlin asked if she was aware of any abutters unhappy with the design. Ms. Whitney said there was one abutter on Elwyn Street, Lot 134 to the left of the property line. She said the applicant was approximately 16' from their property line with 29' in between. She said there was a kitchen window on their bump out that was already blocked by the main house and would be further blocked by this addition. She said that was one reason they reduced the addition from two and a half stories to two stories to reduce the appearance of height and mass. She maintained this was a logical location for the addition that wouldn't change the layout and character of the existing rooms and gave them as much yard space as possible.

SPEAKING IN OPPOSITION TO THE PETITION

Mr. Bob Webster of 134 Lincoln Avenue reviewed his concerns. He said he was concerned with the effect the new foundation would have on the mature trees that would be within 10'. He said he was also concerned about the 45' long wall that he represented was 25'-30' high on the proposed addition, within 30' of his back door, blocking what little afternoon light that currently came into his small kitchen window. He was concerned with the view of the property from the back of his house, the change of aesthetics and the potential impact on the value of his property.

Mr. Rheaume asked if the trees were on his property or theirs, and Mr. Webster said some were in the middle but one or two were theirs and one was his.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Ms. Whitney clarified that there was less than 19' to the eave of the addition and it was 23' to midpoint of the hip roof on the plan.

Chairman Witham noted that the setback was 13' and Ms. Whitney said the requirement was 10'. She reiterated that there was 29' between the buildings where 20' was required.

Vice-Chairman Parrott said they would have the same distance from the back of the new addition to the garage if they put the same 16' x 17' addition to the rear of the house where it wouldn't affect Sherburne Road.

Ms. Whitney said they hated to block the light to the neighbor's kitchen window, but they felt like the alternative would be a hardship to their property. She said it would cut the back yard in two, taking the light and openness of a nice yard area and they would lose most of their open space leaving only two small, disconnected pieces on either side for their entry and garden. She said both properties were on corner lots of wide avenues and except for the dividing lines, they had a

lot of light on three sides all the way around. She said it would be a shame to compromise the applicant's yard for one or two windows on the other property where they had quite a panoramic opening on their other side.

DECISION OF THE BOARD

Chairman Witham noted that the variance request was not for setbacks but for non-conforming lot coverage. The Board needed to determine the reasonableness of the lot coverage request in that neighborhood considering the applicant could take the second floor addition off and slide the addition three feet closer to the property line without an issue.

Ms. Chamberlin moved to deny the petition as presented and advertised. Vice-Chairman Parrott seconded for discussion.

Ms. Chamberlin said she realized it was a small increase in lot coverage and the abutting property at 134 Lincoln Street was a large house with open space on three sides. However, she said there would be no question that sunlight to the neighbor's window would be shut out significantly and she felt the burden should fall on the applicant to make the proposal conform to the zoning regulations and.

Mr. Rheaume said he was in opposition to the motion because the applicant was only proposing to go over the lot coverage by 168 s.f. when 160 s.f. was allowed in the zoning ordinance requirement. He said he had a great deal of sympathy for the abutter whose sight line would be obstructed and their light decreased, but at the same time, the applicant could lop off 1' from the addition and still comply with the zoning ordinance. He said the net result to the abutter would be the same so he felt the request was reasonable.

Ms. Chamberlin reviewed the criteria for denying the request.

- Granting a variance would be contrary to the public interest because the addition could be built within the zoning regulations or in a different location on the lot
- It would not be in keeping with the spirit of the Ordinance because it would block light to the abutting property.
- There would be no substantial justice served for the reasons stated above.
- There would be a negative impact to the abutter, which could affect the value of surrounding properties.
- There were alternative solutions so there was no hardship to the applicant in not granting.

Vice-Chairman Parrott agreed that it was a close call because an argument could be made that it would adversely affect the light for adjacent property. He said in some cases there were no opportunities to redesign and alleviate some of impact, but in this case, they could slide the addition over or do something on the Sherburne Avenue side.

Chairman Witham said he would not support the motion because he felt the lot coverage request of 27.5% was reasonable in a neighborhood with 30% coverage or more. He said it wouldn't change the essential character of the neighborhood. He said he was sympathetic to the partial change in the view from one of the abutter's kitchen windows, but he said they were not asking for a setback, and he felt the location itself was not bearing the weight of the variance request. He said

they needed to keep in mind that the applicant could have built an addition with a taller and longer wall much closer to the property line without a variance.

Mr. Rheaume added that sliding the addition over would made an awkward layout on the first floor of the house, and the architect made a plan that was appropriate for the house.

The motion to deny the petition failed to pass by a vote of 5 to 2, with Messrs LeMay, Moretti, Mulligan, Rheaume and Witham voting against the motion..

*Mr. Rheaume then made a motion to **grant** the petition as presented and advertised. Mr. Moretti seconded.*

Mr. Rheaume said it was important to keep in mind that the homeowner could have been able to do the same thing closer to the abutter without a variance and it would have affected the abutter's property in same way.

Mr. Moretti said while he was sympathetic to the abutter he believed the overage was very small. He said the Board had approved greater overage before, and there were other homes in the area with more coverage.

Mr. Rheaume said he was not in favor of the original plan with two and a half story addition with a gable roof and thought the homeowners made a positive step in the reducing the scale that was more appropriate with a hip roof to allow more light to the abutting property.

Chairman Witham agreed that he also did not support the original two and a half-story addition, and thought the two-story addition was an improvement.

The motion to grant the petition was passed by a vote of 5 to 2, with Ms. Chamberlin and Mr. Parrott voting against the motion.

The petition was granted for the following reasons:

- Granting a variance for a lot in a neighborhood of lots with similar building coverage will not be contrary to the public interest.
- In keeping with the spirit of the Ordinance, this is a small percentage increase in relief.
- Substantial justice will be served by allowing the homeowners to make full use of their property with a better interior layout.
- The impact on the value of surrounding properties will not be significantly different than if a similar addition were built within the requirements of the Zoning Ordinance. The applicants appear to have made a good faith effort to reduce the scale of their proposal to address abutter concerns.
- There is no fair and substantial relationship between the provisions of the Ordinance and their application to this property.

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Mr. Durbin resumed a voting seat and Mr. Moretti returned to alternate status.

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3) Case # 9-3
Petitioner: Portsmouth Submarine Memorial Association
Property: 600 Market Street
Assessor Plan 209, Lot 87
Zoning District: Single Residence B
Description: Construct an 8' x 16' storage shed.
Request: 1. A dimensional Variance from Section 10.521 to allow a left side yard setback of 7'± where 10' is the minimum setback required.

SPEAKING IN FAVOR OF THE PETITION

Attorney Paul McEachern appeared before the Board on behalf of the applicant with a request to put a storage shed behind the visitor center at Albacore Park. He said it was an eight-acre parcel with a National historic monument, the U.S.S. Albacore submarine and a visitors' center and museum located on the side of Route-One Bypass. There was a lot of yard and considerable upkeep, but the small visitors' center had no room to store items needed to run the park. He said they were proposing to locate the 8' x 16' storage shed three feet behind the visitors' center, which was behind a raised mound and a row of trees so it couldn't be seen by users of the park. He said it would go 3' in with a 7' setback where 10' was required.

He said it was in the public interest to have a nice looking park, and placing the storage shed anywhere else would not be in the public interest to showcase a storage shed. He said the spirit of the Ordinance would be observed and substantial justice done by placing the shed behind the visitor center. Attorney McEachern said there would be no impact on the surrounding properties setback from the highway. He said the State had plans to reconfigure the bridge and they didn't know if they might take the back space. He said it might affect the Albacore property in some way and they have allowed a temporary access via Market Street so that was another reason for placing the shed there.

Mr. Rheaume asked what would be stored in the shed and if anything flammable would be stored there. Attorney McEachern said he wasn't positive, but he doubted flammable items would be stored except they might store a can of gas for the lawnmower. He added that they just finished painting the sub on the outside so they might occasionally keep some paint there.

Vice-Chairman Parrott said the staff report showed a 10' setback so there would be no need for a variance. Mr. McEachern said that was an error and they were told by the Planning Department that they were only 7' back and would need a setback variance.

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

With no one further rising, Chairman Witham closed the public hearing.

DECISION OF THE BOARD

*Mr. LeMay made a motion to **grant** the petition as presented and advertised. Vice-Chairman Parrott seconded.*

Mr. LeMay said they had a hardship with a submarine on site that limited their options. Vice-Chairman Parrott concurred.

Mr. Rheaume said he supported the motion and urged them to take the necessary steps to ensure the safe storage of materials used in the upkeep of the property.

The motion to grant the petition was passed by a unanimous vote of 7-0 for the following reasons:

- There will be no impact on the public interest or abutters from this shed, which will be set back from the Route One By-Pass.
- This is a small variance request that will observe the spirit of the Ordinance.
- In the justice test, there would be no benefit to the general public in denying this request.
- With no abutters in close proximity, the value of surrounding properties will not be impacted.
- The special conditions are the size of the lot, the location, the layout and the use of the lot, which create a hardship in meeting this reasonable request.

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4) Case # 9-4
Petitioner: Todd A. Milne Revocable Trust, Todd A. Milne, Trustee.
Property: 315 Wibird Street
Assessor Plan 132, Lot 13
Zoning District: General Residence A
Description: Replace rear addition and deck with a two-story addition.
Request: 1. A Variance from Section 10.321 and Section 10.324 to allow a lawful nonconforming structure to be reconstructed or enlarged in a manner that is not in conformity with the Zoning Ordinance.
2. A dimensional Variance from Section 10.521 to allow a left side yard setback of 5.8'± where 10' is the minimum setback required.

SPEAKING IN FAVOR OF THE PETITION

Anne Whitney, architect for the applicant, handed out a list of abutters that had been notified and approved of the two-story addition. She said the abutters on the list were the two properties on either side of the applicant and across the street on Willard Street. She said there were also two properties to the rear and one was a large multi-family unit, and she had trouble getting in touch with the other, but there was a large amount of open land at the rear with 90' from the closest point of addition. She said the tax map showed all the buildings on that section of Wibird Street as being in tight to the left sides of their property lines.

Ms. Whitney said they were proposing to take down a one-story addition, remove a deck, and replace it with a two-story addition. She said the new deck would be 15" off the ground and would not be included as building coverage, but she included a photo so the Board could see what they were doing. She said she would match the kitchen roof pitch and overlay the existing roof with a little shed roof at the back. Ms. Whitney described the floor plan of the addition that would extend the kitchen and add a half bath, a mudroom and closet storage space on the first floor; and add two small bedrooms and a bathroom to the second floor for some much needed living space.

SPEAKING IN OPPOSITION TO THE PETITION, OR

SPEAKING TO, FOR, OR AGAINST THE PETITION

With no one further rising, Chairman Witham closed the public hearing.

DECISION OF THE BOARD

Following a brief discussion, *Vice-Chairman Parrott made a motion to **grant** the petition as presented and advertised. Mr. Durbin seconded and the petition was granted by a unanimous vote of 7 to 0.*

The petition was granted for the following reasons:

- Located in the rear, this replacement addition will not be contrary to the public interest.
- In the spirit of the Ordinance, the homeowner will be allowed to improve the property and make it more useful without negatively affecting neighbors.
- There is no offsetting public interest that would argue against granting these variances.
- The value of surrounding properties will, if anything, be positively affected.
- The orientation of the existing house on the lot creates a hardship in placing an addition and this location is the logical choice for the construction.

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5) Case # 9-5
Petitioners: Mara K. Khavari, Suzanne M. Brown & T. T. Michael Macdonald, owners, Jay McSharry, applicant
Property: 46 Mark Street
Assessor Plan 116, Lot 52
Zoning District: Mixed Residential Office
Description: Replace existing structures with new single family home.
Request:
1. A Variance from Section 10.321 to allow a lawful nonconforming structure to be reconstructed in a manner that is not in conformity with the Zoning Ordinance.
2. A dimensional Variance from Section 10.521 to allow a rear yard setback of 3'± where 15' is the minimum setback required.
3. A dimensional Variance from Section 10.521 to allow a lot area of 5,497 s.f. where 7,500 s.f. is required.
4. A dimensional Variance from Section 10.521 to allow a lot area per dwelling unit of 5,497 s.f. where 7,500 s.f. is the minimum required.
5. A dimensional Variance from Section 10.521 to allow continuous street frontage of 41'± where 100' is the minimum required.
6. A dimensional Variance from Section 10.521 to allow a lot depth of 52' where 80' is the minimum required.
7. A dimensional Variance from Section 10.521 to allow 41.6% building coverage where 40% is the maximum building coverage allowed.

SPEAKING IN FAVOR OF THE PETITION

Chairman Witham noted the receipt of a letter from an abutter whose garage encroached onto the property, asking that they put the hearing on a hold until that issue was resolved. Chairman Witham said the Board could still hear the facts before them and the abutter's issues should not affect them.

Mr. Brendon McNamara stated that he was the designer for the project and was appearing on behalf of applicant, Mr. Jay McSharry. He stated that they thought they had an agreement with the abutter to leave the issue as it stood. However, he said they would have further discussions to see if an easement or lot line adjustment was possible, but it would be a separate request and wouldn't change their current request. H said they had no intention of disrupting the abutter or causing any expense to him.

Mr. McNamara said they had initiated work sessions with the Historic District Commission, and they would be doing a site walk on September 29, although the house did not appear to have any historic significance. He said the existing lot was covered with the structures dating back to the 1920's which were falling down. They intended to demolish the entire structure and rebuild a single-family structure which would be less nonconforming as the current lot coverage of 51.5% would be reduced to 41.6%.

Mr. McNamara said the owners also owned a two-family home on 65/67 Mark Street that had no parking so they were looking to alleviate that parking problem by creating two parking spaces on this property for eight spaces between the two properties. He pointed out where the neighbor's garage was built across the lot line. He said the line would be moved if they did a lot line adjustment. Mr. McNamara indicated the driveway and parking area on the proposed site plan, and their proposal for a traditional shingled New Englander home in keeping with the house on 28 Mark Street.

Mr. McNamara said the first variance was a rear yard setback though the rear yard was on the southern boundary facing the Portsmouth Middle School and wouldn't be treated as a typical rear yard.

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

With no one further rising, Chairman Witham closed the public hearing.

DECISION OF THE BOARD

Chairman Witham said the applicant was asking the Board to come to an agreement that the lot was buildable since it already had a house on it so they should be allowed to build again with greater conformity. He said they were asking for a 3' rear setback up against an existing parking lot with no setback, and the allowance of 41.6% lot coverage where 51.5% currently existed and only 40% was allowed.

*Mr. Mulligan made a motion to **grant** the petition as presented and advertised. Mr. Durbin seconded.*

Mr. Mulligan said they did a nice job presenting what went on with the property that was in rough shape and cobbled together in stages over time. He said it had some special circumstances abutting the Portsmouth Middle School, and it cried out for treatment. Although seven variances were required, the proposal was an improvement that brought the property into greater compliance.

Mr. Durbin agreed, adding that although there was a potential legal dispute regarding the existence of an abutting garage on the property line, he didn't believe that changed the scope of their considerations.

Mr. Mulligan agreed on the issue of lot line encroachment, but thought that was their issue and what the Board decided had no binding effect on ownership.

Mr. Rheaume supported the request. He said he had some initial reservations about tearing down the existing structure until he saw for himself that the wood frame house had signs of deterioration and the barn had major structural issues. He said all three structures were tied together, and once one of them was lost, any value to all of them was lost. He said it was a unique area with a lot of open space around it and the proposed new structure was in keeping with the neighborhood with relatively large abutting structures surrounding it, including the structure on 28 Mark Street and only one diminutive house across the street.

Chairman Witham said he would support the request because there was a decrease in lot coverage and although it was still tight, the increase to the setback was up against a parking lot. He said the parties involved would probably have to return to the Board for a lot line adjustment.

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

The petition was granted for the following reasons:

- Bringing structures into greater compliance will be in the public interest. Light and air to surrounding properties will be increased and the structures will be in keeping with others in the neighborhood.
- The spirit of the Ordinance will be observed, as this mixed-use district is a transitional zone where there can be flexibility in bringing projects forward.
- In the justice test, there would be no gain to the public in denying these variances.
- The value of surrounding properties will be increased by this improvement to the property.
- Special conditions exist in the property. This is a lot on a dead end street, fronting on both the dead end and the street with nonconforming buildings in need of repair. The setback and lot coverage restrictions are not necessary in this instance to achieve the purposes of the Ordinance.

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6) Case # 9-6
Petitioners: Mara K. Khavari, Suzanne M. Brown & T. T. Michael Macdonald, owners, Jay McSharry, applicant
Property: 65/67 Mark Street
Assessors: Map 116, Lot 51
Zoning District: Mixed Residential Office
Description: Replace rear decks, porches and stairs with an enclosed porch.
Requests: 1. A Variance from Section 10.321 to allow a lawful nonconforming structure to be reconstructed in a manner that is not in conformity with the Zoning Ordinance.
2. A dimensional Variance from Section 10.521 to allow a left side yard setback of 0.44'± where 10' is the minimum setback required.
3. A dimensional Variance from Section 10.521 to allow a right side yard setback of 8.66'± where 10' is the minimum setback required.

4. A dimensional Variance from Section 10.521 to allow 42.2% building coverage where 40% is the maximum building coverage allowed.
5. A Special Exception and Variance from Section 10.1113.112 to allow 2 off-street parking spaces to be located on another lot in the same ownership as the lot in question and within 300' of the property line in question.

SPEAKING IN FAVOR OF THE PETITION

Mr. Brendon McNamara, designer appearing on behalf of applicant, Mr. Jay McSharry presented the design elevations for their proposal. Mr. McNamara said this property was part of the work sessions they initiated with the HDC, and they would be doing a site walk on September 29. He said the house was built in the 1820's and it was uncertain whether it was initially built as a duplex or a primary residence with a large servant residence. There were a number of additions put on the house including an enclosed porch across the rear.

Mr. McNamara said they were proposing to substitute the existing lot coverage and concentrating it into one cohesive structure at the rear. He said they were proposing to continue the roofline across the rear of the building and make a new porch on other end. He said they would demolish the 5' wide side addition so they could get two cars nose to tail on the right hand side of the property because the duplex was on dead end street with no parking, which was a source of irritation to tenants and neighbors.

Mr. McNamara showed the proposed retention of the footprint and the additional footprint after the demolition of additions, along with the driveway for two car parking spaces. He said they would decrease open yard space slightly to alleviate the limited parking situation at the end of the street, but the current lot coverage was nonconforming and their proposal would reduce the nonconformity somewhat.

Vice-Chairman Parrott said the Ordinance required 8.5' x 20' for head-to-toe parking and the dimension of their off-street parking proposal was 8.5' x 38' for two cars, only giving 19' in length for each car. He said they needed to change the dimensions so they matched the Ordinance. Mr. Nicholas Cracknell of the Planning Department said Vice-Chairman Parrott was correct that zero degree parallel parking along the street was 8.5' x 20' per car, but his interpretation of the proposal was that it was off street tandem parking on private property for the same owner so it wasn't necessary because no one would be backing into a parallel parking space on the street. He said they certainly could increase the space to 20', however. Vice-Chairman Parrott said he read the dimensions for design of off-street parking spaces and he thought there was room to increase the dimensions. Mr. McNamara said there was no physical restriction on either space so he would be more than happy to do that.

Chairman Witham asked what the current lot coverage was, and Mr. McNamara said it was 42.6% and they were bringing it down to 42.2%.

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

With no further rising, Chairman Witham closed the public hearing.

DECISION OF THE BOARD

*Mr. Rheaume made a motion to **grant** the petition as presented and advertised. Ms. Chamberlin seconded.*

Mr. Rheaume said he looked at the property and the proposed would be an improvement to take a structure that had been neglected for some time and give it a more historic look, lowering the building coverage to only a small amount above the 40% allowed. He also said creating parking spaces, which were essentially non-existent was a major improvement, and he was not aware that the off-street parking spaces would violate any requirements for a Special Exception.

Ms. Chamberlin agreed that the property needed some work, which would increase the value and the nature of the lot required a number of variances for the improvements.

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

The petition was granted for the following reasons:

- Relieving some parking and upgrading a neglected structure will have a positive effect on the public interest.
- While a number of variances are being granted, there will be less relief required for building coverage. The most intrusive setback follows the line of the existing structure.
- Substantial justice will be done by allowing the property to make needed improvements while creating a better situation for neighbors.
- The improvements should, if anything, have a positive effect on surrounding property values.
- With the way the current building sits on the lot, it cannot be reasonably used and improved in strict conformance with the Ordinance.
- The two proposed parking spaces on an adjoining lot in common ownership will meet all the standards for granting a Special Exception.

V. OTHER BUSINESS

No other business was presented.

VI. ADJOURNMENT

It was moved, seconded and passed by unanimous voice vote to adjourn the meeting at 9:25 p.m.

Respectfully submitted,

Jane K. Kendall
Acting Secretary

Minutes Approved 12-17-13