

**MINUTES OF THE BOARD OF ADJUSTMENT MEETING  
PORTSMOUTH, NEW HAMPSHIRE  
MUNICIPAL COMPLEX, 1 JUNKINS AVENUE**

**EILEEN DONDERO FOLEY COUNCIL CHAMBERS**

**7:00 p.m.**

**MAY 19, 2009**

**MEMBERS PRESENT:** Chairman Charles LeBlanc, Vice Chairman David Witham Carol Eaton, Thomas Grasso, Alain Jousse, Charles LeMay, Arthur Parrott, Alternate: Robin Rousseau

**EXCUSED:** Alternate: Derek Durbin

**ALSO PRESENT:** Lucy Tillman, Chief Planner, Lee Jay Feldman, Principal Planner

---

**I. OLD BUSINESS**

A) Approval of Minutes – April 21, 2009

Ms. Rousseau stated that a specific comment she had made, speaking not as a Member of the Board but as an abutter on the 55 Congress Street petition, had not been included as she believed she had stated it. It was requested that the tape of the meeting be checked and the Minutes be amended to include the referenced statement as it appeared on the tape. It was moved, seconded and passed to accept the Minutes as so amended.

B) Petition of **Jonathan Schroeder, owner**, for property located at **324 Maplewood Avenue** wherein the following were requested: 1) Variances from Article III, Section 10-303(A) and Article IV, Section 10-401(A)(2)(c) to allow a two story addition on an existing garage/storage building to house two additional dwelling units on a 3,210 sf lot (that also contains a second building with a commercial use on the 1<sup>st</sup> floor and a dwelling unit on the 2<sup>nd</sup> floor) with: a) a 5.47'± left side setback where 10' is the minimum required, and b) a 1'± rear setback where 15' is the minimum required; and, c) 1,070 sf of lot area per dwelling unit where 7,500 sf of lot area per dwelling unit is required for a total of three dwelling units on the property requiring 22,500 sf of lot area. 2) a Variance from Article XII, Section 10-1201(A)(3) to allow the required parking spaces to back out onto the street where such parking layout is not allowed; and 3) a Variance from Article III, Section 10-301(A)(2) to allow dwelling units in two separate buildings on a lot where all dwelling units shall be located in one building. Said property is shown on Assessor Plan 141 as Lot 1 and lies within the Mixed Residential Office and Historic A districts. *(This petition was postponed from the April 21, 2009 meeting)*

Chairman LeBlanc announced that the applicant had requested a further postponement to the June 16, 2009 meeting. Mr. Witham made a motion to postpone the application to the June meeting, which was seconded by Mr. Parrott and passed by a unanimous voice vote.

---

## II. PUBLIC HEARINGS

1) Petition of Goodman Family Real Estate Trust, owner, Paul Vrusho d/b/a Granite State Greenhouse & Nursery, Inc., applicant, for property located at 1850 Woodbury Avenue wherein the following were requested: 1) a Variance from Article II, Section 10-208 to allow the outdoor sales of plants, produce and nursery products in a district where outdoor sales are not allowed, and 2) a Variance from Article IX, Section 10-908 Table 14 to allow two 32 sf freestanding A-frame signs (64 sf total) creating: a) 156 sf of aggregate signage where 102 sf is the maximum allowed; and b) a 1'± front setback where 20' is the minimum required. Said property is shown on Assessor Plan 239 as Lot 9 and lies within the General Business district.

### SPEAKING IN FAVOR OF THE PETITION

Attorney Charles Griffin referenced the packet he had submitted which contained the outline of his argument, along with a series of exhibits, and the additional exhibits he had distributed that evening. The applicants were seeking a use variance to permit the outdoor sales of plants and nursery products, as well as two freestanding a-frame signs to advertise the products sold. These would total 156 s.f. where 102 s.f. was allowed and also would fall within the 20' setback. He noted that the business had been in operation for over 20 years in other communities in New Hampshire and Massachusetts and had recently received a similar variance in Lee. One of the submitted photographs showed the operation at this site.

Citing some of the surrounding retail operations, all of which had signs, Attorney Griffin stated that the value of surrounding properties would not be diminished in this General Business zone. The Gosling Meadows housing project to the west had a vegetative buffer. While the other businesses operated year-round, the proposed operation would be seasonal, April 1<sup>st</sup> to December 31<sup>st</sup> with a short break at the end of October. The hours of operation would be 8:30 a.m. to 6:30 p.m., seven days a week. No new buildings would be constructed, although they were proposing to spend \$15,000 on site improvements. The merchandise would be on height adjustable, movable stands which would be stored until the next April. There would be a maximum of two employees. He stated that the proposed use would meet the spirit and intent of the ordinance and pose no danger to health, safety and welfare. The lot exceeded the minimum area, frontage and depth requirements and offered 35 parking spaces where 31 were required. There would be no change in footprint or new impervious area, no use of fertilizer or chemicals, and no demand for additional municipal services. There would be adequate light and air and the type of use was similar to what would be permitted inside a commercial greenhouse. Addressing an issue in the departmental memorandum, Attorney Griffin stated that the existing lights on the lot would not be used, only Christmas lights in season.

Attorney Griffin stated that the restriction did interfere with a reasonable use of the property as the ordinance allowed similar retail sales but not outside the building. Referring to the plan on display, he indicated the features of the building and site that made the property unique in its environment. Expanding the footprint would be problematic and require variances. He maintained that there was no fair and substantial relationship between the general purposes of the zoning ordinance and the specific restriction on the property as the area was zoned for an

inside retail use. A seasonal outdoor use would be less intense and would not result in overcrowding or the loss of adequate air and light. The character of the neighborhood would not be altered or the public or private rights of others be affected.

Addressing the request for a sign variance, Attorney Griffin stated that it was necessary to have the signs and that they be large enough to show the name of the business and list the products offered. The signs need to be close to Woodbury Avenue because there was a landscape buffer to the north which runs along Woodbury Avenue. He referenced the photographs he had distributed that evening which were designed to show the perspective of someone in a motor vehicle exiting the southern egress. He had tried to show, with the scale of the signs superimposed, that there would be adequate line of sight. In terms of the need for two signs, as you come upon the site, you pass Dunkin Donuts and there was not sufficient time to react to the first sign, but then the second sign guides you to the entrance. The requested signs would be taken in each evening.

Attorney Griffin stated that it would be in the public interest to bring a new business into the community where new businesses are needed. It would also afford the public the opportunity to purchase plants, produce and nursery products without altering the essential character of the neighborhood. Regarding substantial justice, he stated there were two other lots in the area which had two businesses with separate signs as depicted in the exhibits. In this case, adhering to the strict requirements of the ordinance did not outweigh the applicant's right to make a seasonal use of the property in a way which would be in the public interest. They would be agreeable to the stipulations outlined in the memorandum: that no trees or shrubs would be cut; that there would be no chemicals or pesticides used; and that the old lights on the property not be used. They would like to have the two freestanding signs as both were needed and could be located to not interfere with the line of sight. He noted that the variance request indicates a 1' front setback but in this case, there was a distance from the front property line to the edge of the pavement, as indicated on the plan, so that one sign actually sets back about 10' or 11' and the other 6' or 7'.

Mr. Witham asked about the existing pylon sign for the mattress company and Attorney Griffin stated that would remain but their proposed business would not be advertised on the masthead. Ms. Tillman clarified that the mattress company was not leaving. This would be an additional use of the property which would encompass some of the grass area and share parking with the mattress store.

In response to questions from Chairman LeBlanc, Attorney Griffin indicated the property line on Exhibit 6B, confirming that the telephone pole shown was on city or state property. The site plan shows a 5' paved sidewalk between the front property line and the paving on Woodbury Avenue. He confirmed to Mr. Jousse that they do plan on selling locally grown produce. Mr. Jousse asked about the fertilizer that might already be in the soil of the plants. Mr. Paul Vrusho stated that they usually get the plants in July and August and pelletize the fertilizer. Over the winter, it disintegrates and they don't add more in the spring, in accordance with the wishes of the towns in which they operate. There would be no runoff of fertilizer.

## **SPEAKING IN OPPOSITION TO THE PETITION**

Mr. Fred McMullen stated that he was the owner of 1000 Woodbury Avenue and would like to request denial. Everything they wanted to do required a variance and he didn't see a hardship or that this operation was in keeping with all that the City had done on Woodbury Avenue.

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

Attorney Griffin stated, for the record, that the gentleman who just spoke owned a competing business on Woodbury Avenue.

### **DECISION OF THE BOARD**

Ms. Eaton asked if this proposal required site review and Ms. Tillman indicated it did not.

Mr. Witham asked if they would be setting up a cash register every day in the parking lot. When Mr. Vrusho indicated that would be inside the building in the two bays for their use, Mr. Witham asked how much space they would occupy and whether there would be retail in that space. Mr. Vrusho stated the area would be approximately 20' x 20' and there had been retail when Honda was there. When Mr. Witham asked if they would use any of it for retail or just the register, Mr. Vrusho stated it would be for the register and retail for produce.

Chairman LeBlanc asked then if sales would actually be taking place inside the building and Mr. Vrusho confirmed they would. Ms. Eaton asked if the area in question was that shown on the plan as produce sales and Mr. Vrusho stated it was. They would utilize two of the four indicated squares. When Ms. Eaton asked where the flower and shrub storage would be, Mr. Vrusho stated it would be in back of the fence to the right hand side.

Mr. Witham made a motion to grant as presented and advertised part 1) of the request, to allow the outdoor sales of plants, produce and nursery products. The motion was seconded for discussion by Mr. Grasso.

Mr. Witham stated that he felt there had been a need for this type of service in Portsmouth and it would be an alternative to chain stores, a place where locally grown produce could be purchased. This type of operation can best take place on the outside, but the outside sale of these products was not addressed specifically in the ordinance. He noted that Woodbury Gardens had a similar operation with no negative impact and, on the upside, it would add some color to the landscape.

He stated that granting the variance would not be contrary to the public interest in any way. Denying it would result in a hardship as the restriction on the property would interfere with a reasonable use. There was no fair and substantial relationship between the ordinance and the restriction on the property as this was a grey area not specifically spelled out. The public or private rights of others would not be hindered. He felt it was in the spirit of the ordinance to allow a business to operate and the ordinance was not intended to protect a competitor who might feel an adverse impact. He stated that justice would be done and there was no reason to believe that the value of surrounding properties would be diminished.

Mr. Grasso stated that he would like to add the four points from the departmental memorandum as stipulations, with the fourth added if they only allowed one freestanding sign. Mr. Witham agreed to attach the first three stipulations, but felt the last could be addressed separately with the sign variance. Mr. Grasso stated that, with the stipulations, this was a business that could fit in this location. The stipulations would be the following: 1) That no trees or shrubs between this site and Lo's Seafood would be cut; 2) That no chemicals or pesticides would be used on the property which would negatively impact the abutting wetland; and 3) That the old light poles located on the property would not be used due to safety considerations and, if new light poles are proposed, then Dark Sky Friendly standards will be met. The applicant may be required to seek the approval of the Technical Advisory Committee for placement and foot candle standards.

The motion to grant part 1) of the petition as presented and advertised with the three stipulations was passed by a vote of 5 to 2, with Messrs. Jousse and Parrott voting against the motion.

Mr. Grasso made a motion to approve one freestanding sign in the arched area in the middle of the property as far as possible from the property line. He asked if that location would still require a variance and Ms. Tillman confirmed it would. Mr. Jousse stated that they should specify the size of the sign. Mr. Grasso stated that it should be a 32 s.f. freestanding sign. Mr. Witham seconded the motion.

Mr. Grasso stated that granting the sign would not be contrary to the public interest as it would be portable and removed at night. He felt they should be able to advertise what was for sale. There was no fair and substantial relationship between the general purposes of the ordinance and the restriction on the property as the property was intended for use for sales. There would be no injury to the public or private rights of others and it would be in the spirit of the ordinance to advertise their business. He didn't see that there would be any diminution in the value of surrounding properties.

Mr. Witham concurred, adding that, while the sign request didn't meet the strict letter of the law, a single sign wouldn't clutter the roadway and would be appropriate for the use. He stated that he knew the Board frowned on too much signage, but he would rather see something that was portable with no lights. The seasonal nature of the operation and the limited hours would result in a minimal impact.

The motion to grant one 32 s.f. freestanding sign placed in the center as far off the property line as possible was passed by a vote of 5 to 2, with Messrs. Jousse and Parrott voting against the motion.

---

2) Petition of David P. MacDonald and Nancy T. MacDonald, owners, for property located at 28 Ball Street wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow an 8' x 12' one story porch addition to the left side of the existing dwelling with a 6'± front setback where 30' is the minimum required. Said property is shown on Assessor Plan 207 as Lot 54 and lies within the Single Residence B district.

**SPEAKING IN FAVOR OF THE PETITION**

Mr. David MacDonald referred to the package they had submitted outlining their request to add a sun porch to the sunny end of our house and, to accommodate it, move the driveway to the shady end of the house. With the house positioned less than 5’ from the street, there was no way to place a porch there while remaining in compliance with the ordinance. He asked for their consideration and approval.

In response to questions from the Board, Mr. MacDonald stated the house was constructed between 1780 and 1840. They had chosen the left side of the house as that was the only place where there was sun for a sun porch. He clarified that there was a short doorway on the right side and placing the porch there would put it on top of the doorway, but it was inconvenient for a number of reasons, primarily because it was dark. He agreed when Mr. Jousse commented that there also would not be much of a view.

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

With no one rising, the public hearing was closed.

**DECISION OF THE BOARD**

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

Mr. LeMay thought this was a modest extension of a pre-existing nonconforming structure. It would allow the owners a reasonable use of the property and help improve the section most impacting the neighbors to the south. The porch would be further from the road than the building so, consistent with the spirit of the ordinance, there would be no intensification of the nonconformity. Justice would be done by allowing the owner this reasonable expansion with no negative impact on surrounding properties.

Mr. Parrott agreed, stating that the requested expansion was of a modest size. Looking at hardship, the house was set in a peculiar way with regard to the road. He noted that the expansion was not close to adjacent property and was the least objectionable placement.

Mr. Jousse stated that this was a very small house which may have been there before the street. Although not within the Board’s jurisdiction, he hoped that, if approved, the applicants would reconsider making the new driveway out of crushed stone instead of asphalt.

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

~~~~~  
3) Petition of Thomas S. Carpenter and Karen G. Carpenter, owners, for property located at 139 Brackett Road wherein the following were requested: 1) a Variance from Article IV,

Section 10-402(B) to allow an 10' x 16' storage shed with: a) a 5'± rear set back, and b) a 5'± right side setback where 10' is the minimum required in each instance, and 2) Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) to allow a 10' x 10' front entry porch with an 18.1'± front setback where 30' is the minimum required, and b) 27.5% building coverage for all where 20% is the maximum allowed. Said property is shown on Assessor Plan 206 as Lot 15 and lies within the Single Residence B district.

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

Mr. Ray Holmes stated that he was representing the applicants who would like to remove a non-compliant deck plus stairs in the backyard and construct an 8' x 16' addition and screen porch, with a set of stairs. These changes would bring the backyard into compliance. In the front yard, they would like to replace a 6' x 6' set of steps which were not in compliance with a 10' x 10' covered porch. They would also like to add a 10' x 16' garden shed in the back yard which would be less than 5' from the left and rear setbacks. Mr. Holmes indicated that the building coverage was listed as 27.5% on the petition but it was actually 24.7% as he had forgotten to deduct the deck and stairs to be removed when he computed the square footage, currently 27.7%. He distributed an updated list showing how he arrived at the 24.7% figure. Chairman LeBlanc noted that the Board can grant less relief.

Mr. Holmes stated that these improvements were to make this single family home safer and more livable without negatively impacting the neighborhood in any way. Referring to the submitted packet, he stated that granting the petition would not be contrary to the public interest. The requested changes were minor and would not alter the nature and use of a single family home, which was already on a nonconforming lot.

He referred to the submitted photographs and exhibits and described each element and change which would help accommodate an extended family. The 10' x 10' front entryway would provide weather protection and alleviate a tight and somewhat dangerous situation with the current entry. He noted that there was no other storage area other than the garage for lawn equipment. He felt that it would be in the spirit of the ordinance to allow enjoyment of the single family home with only a slight change in the footprint. Justice would be served by allowing the owners to bring their residence up to code and improve its livability and safety. The construction would be of excellent quality and the design concept in keeping with the neighborhood so the value of surrounding properties would most likely be improved. In response to a question from Chairman LeBlanc, he indicated the shed height would be 10'.

### **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. Witham.

Mr. Grasso stated that the applicants were proposing to modernize and make a few changes to accommodate an extended family. He stated that it would be in the public interest to replace an older deck and reduce the nonconformance in the rear. The special conditions creating a hardship were that the lot was odd shaped and about half what it should be in the district. With the property itself and the way the building sits on the lot, there was no other reasonably feasible method to achieve their aims. It would be in the spirit of the ordinance to allow the family a reasonable enjoyment of their property. There would be no benefit to the public in denying the variance and the value of surrounding properties would not be diminished.

Mr. Witham added that, while the relief in front was 18', it was a considerable way from the edge of the pavement. With only a 4% increase in the lot coverage from that required, it would meet the spirit and intent of the ordinance. It was a fairly compact lot, but a lot of lawn area was maintained in the front of the home, which also spoke to the spirit of the ordinance. They could ask for a smaller shed but he didn't feel the need to impose that condition considering the size of the house. He didn't see that there would be any adverse effect on the neighbors.

Mr. Jousse stated he would not support the motion because the shed, at 10' x 16' was not a garden shed but almost a garage. He felt that if the applicant was looking for a place to store lawnmowers and equipment, the area under the screened porch might have enough headroom for that purpose.

Mr. Witham stated that, based on those comments, he would like to see this item voted on separately as he would hate to see the entire petition denied on the basis of the shed. Chairman LeBlanc stated that Mr. Grasso would have to withdraw his motion in order to make a split.

Mr. Grasso withdrew his motion. Mr. Grasso then made a motion to grant part 2) of the petition, the front entry porch and the corrected lot coverage of 24.7%.

Ms. Tillman noted that the 24.7% included the shed. Mr. Witham acknowledged the fact and seconded the motion.

Mr. Grasso and Mr. Witham requested that their previous comments be applied to this motion. Mr. LeMay noted that the 24.7% figure would be reduced by the 160 s.f. for the shed. Mr. Witham stated that he would like to leave the percent in there.

The motion to grant part 2) of the petition to allow the front entry porch and 24.7% building coverage was passed by a unanimous vote of 7 to 0.

Mr. Parrott made a motion that part 1) of the petition be approved as presented and advertised with the stipulation that the shed size be no larger than 10' x 12'. The motion was seconded by Mr. Witham.

Mr. Parrott stated that sheds were usually 10' x 10' or 10' x 12'. This was strictly for the storage of garden and other outdoor equipment and 10' x 12' should be sufficient. There was no hardship outlined to justify the need for a larger size and this was more reasonable. They could require that the position be moved further from the property line, but it made more sense to keep it at 5' with a smaller size. Mr. Witham commented that the motion was well thought



out. In response to a question from Mr. Grasso, Chairman LeBlanc confirmed that they were voting on a smaller size shed, still allowing a 5’ setback.

The motion to grant part 1) of the petition with the shed size reduced to 10’ x 12’ was passed by a vote of 6 to 1, with Mr. Jousse voting against the motion. The Board acknowledged that the approved building lot coverage would be further reduced to 24.1% by the reduction in the approved shed size to 10’ x 12’.

~~~~~  
4) Petition of Antoine Albathany, owner, for property located at 999 Woodbury Avenue wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow: a) a 6’ x 31’ farmers porch addition to the front of the single family dwelling with a 25’± front setback where 30’ is the minimum required, and b) 20.6%± building coverage where 20% is the maximum allowed. Said property is shown on Assessor Plan 219 as Lot 32 and lies within the Single Residence B district.

Mr. Witham stepped down for this petition and Ms. Rousseau assumed a voting seat.

**SPEAKING IN FAVOR OF THE PETITION**

Mr. Harry Durgin stated that he was the builder for the project, which included raising the roof to convert a cape into a colonial. With the neighborhood setting, they felt a farmers porch in the front would be appropriate and he briefly described the proposed style and design.

In response to questions from the Board, Mr. Durgin stated that the current lot coverage was 18% and that the porch will not be closed in. The porch will be covered but open at the sides except for the handrails and columns.

Mr. Kevin Drohan stated that he was an abutter to the rear of the property. The applicant had already made changes to improve the property and he felt this would be an additional improvement.

**SPEAKING IN OPPOSITION TO THE PETITION**

Chairman LeBlanc referenced a letter included in the member’s packet from Ms. Susan Lewis, who was not in favor of the porch.

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

With no one rising, the public hearing was closed.

**DECISION OF THE BOARD**

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

Ms. Rousseau stated that this was a simple porch which would not be contrary to the public interest. She didn't see any issue as far as an area variance being needed to enable the applicant's proposed use of the property given the special conditions of the property. . Regarding the benefit sought by the applicant not being achieved by some other method reasonably feasible, she stated that she thought the request for this variance was very reasonable. They were really only talking about a 5% or a 5' front setback request, and she thought it was .6% as far as the building coverage so they were not talking about anything extreme. She stated, "yes" to the variance being consistent with the spirit of the ordinance and substantial justice being done for the applicant. She thought the request was very reasonable. Regarding the value of surrounding properties being diminished, she stated there was no evidence to that effect. She thought it was a very simple variance request and they should allow the property owner to use the property as intended. It was a very reasonable request.

Ms. Eaton stated that the porch was only 6' wide, which she didn't find excessive for this section of the city and it was in harmony with the nearby buildings. Citing the dissenter's comment about it being near the Frank Jones neighborhood, she felt adding the porch would actually compliment the style of the area in which the Frank Jones house was situated. The setback was needed because of the depth of the farmers porch and there would only be a minor increase in lot coverage.

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

Mr. Witham resumed his seat and Ms. Rousseau returned to the alternate's chair.

~~~~~

5) Petition of Clear Channel Broadcasting Inc., owner, FLO TV, Inc. f/k/a Mediaflo USA, Inc., applicant, for property located at 815 Lafayette Road wherein a Variance from Article II, Section 10-208 was requested to allow a 12.2' x 0.7' x 2.7' antenna attached to the existing guyed tower and associated 10' x 19'10" equipment shelter with two dish antennas mounted to the roof and two GPS antennas mounted to the new cable bridge for live mobile tv in a district where such use is not allowed. Said property is shown on Assessor Plan 245 as Lot 3 and lies within the General Business district.

**SPEAKING IN FAVOR OF THE PETITION**

Mr. Joshua Delman stated that he was representing the owner, a provider of wireless mobile tv service, and the proposal was part of a plan to develop three sites to provide the service to the seacoast area in accordance with FCC requirements. As described in the submitted exhibits, they were proposing a 12.2' x 0.7' x 2.7' antenna on an existing tower and to slightly expand the existing compound at the base of the tower and install a 10' x 19'10" equipment shelter with two dishes mounted to the roof of the shelter. There would also be two GPS antennae mounted to the new cable bridge.

He stated that, without the requested relief for this site, there would be a significant gap in coverage as shown on the submitted maps. The necessary equipment to provide coverage would utilize the existing structure designed for this purpose. It would be in the spirit of the ordinance and the public interest to provide additional wireless services in a growing area. He

noted that a lapse in coverage could impede public safety if responders did not receive messages on a timely basis. Mr. Delman stated that justice would be served by allowing the service without requiring an additional broadcast tower. In response to questions from the Board, Mr. Delman stated that the mounting halfway up the tower was based on the necessary handoff to other sites. The GPS were needed on the bridge as a requirement of the FCC.

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

Mr. Witham stated that this was a minimal request and having coverage increased at this site rather than adding another tower would be in the public interest. Denial would result in a hardship as the tower was in place. Adding the antenna there made sense and was a reasonable use of the tower and property. He stated that there was no fair and substantial relationship between the zoning ordinance and the restriction on the property. The restriction had been already lifted to allow the tower and it would be contradictory to say you couldn't put an antenna on it, unless it cluttered the property, which it did not. No one had spoken against the proposal to claim any injury to public or private rights. He felt justice would be served and it would be in the spirit of the ordinance to allow this type of technology to be available to the citizens of Portsmouth. There was no reason to believe that the value of surrounding properties would be diminished. If anything, requiring a new tower instead would have that result.

Mr. Grasso stated that he was in favor of using the existing structure rather than tying up another piece of land in the city for this purpose.

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



Before the meeting adjourned, Ms. Rousseau stated that she wanted to raise an issue. She described being approached after a recent meeting by an abutter at Springbrook Condominiums who had not received an abutter notice from their association, as well as material received from the City Attorney after she referred the question to him. She also related details of her conversations with attorneys at the New Hampshire Local Government Center. She stated that she was bringing to the Board's attention two procedural issues. One was that state statute required that notification be given to the officers of a condominium association and the other was that we need to ensure that the green cards or the certified notices come back or the hearing should not move forward. She felt that, sitting on a City Board, they represent the property owners of the city and should make sure that their rights are protected. She stated that she was

also putting on the table to the Board that they should proactively ask for a rehearing to assure that all abutters were notified properly and their property rights were protected.

Ms. Tillman stated that the City sends out abutter notices via certified mail to direct abutters, as they were required to do. They do not do return receipts so there would be no green card to receive back. When Ms. Rousseau asked how, if they needed to go to court, evidence of the proper notification could be supported, Ms. Tillman reiterated that, procedurally, they did exactly what they were supposed to do. When Ms. Rousseau restated the recommendation of the Local Government Center, Chairman LeBlanc recommended that she take up the matter with the City Council or the City Attorney. Ms. Rousseau responded that she had talked with the City Attorney and he would be advising them soon.

---

### **III. ADJOURNMENT**

It was moved, seconded and passed by unanimous voice vote to adjourn the meeting at 8:25 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary