

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

MUNICIPAL COMPLEX, 1 JUNKINS AVENUE

EILEEN DONDERO FOLEY COUNCIL CHAMBERS

7:00 p.m.

July 21, 2009

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

EXCUSED: Carol Eaton, Alternate: Derek Durbin

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

I. OLD BUSINESS

- A. Approval of Minutes – April 28, 2009
- May 19, 2009

It was moved, seconded and passed by unanimous voice vote to accept the April 28, 2009 minutes as presented and the May 19, 2009 correcting the date of the meeting on the minutes.

Ms. Rousseau raised a question regarding the handling of minutes and a brief discussion followed between Ms. Rousseau and Chairman LeBlanc. Ms. Rousseau felt that they were the only ones who really knew what they said and they had no idea what an individual typed into the minutes. She felt a responsibility to the citizens of Portsmouth to make sure they get the most accurate minutes possible and that minutes should not be approved without the Board seeing the changes made. Chairman LeBlanc noted that the minutes had been approved as corrected and the corrections were made in accordance with the tape that was made of the meeting. The corrected minutes could be viewed in city hall or on line. He saw no reason to change the protocols that had been place for over 20 years

B. Request for Extension – 24 Central Avenue

Mr. Grasso made a motion to grant an extension of the Special Exception through December 31, 2009, which was seconded by Mr. Parrott.

Mr. Grasso stated that he remembered when the applicant had appeared and they had discussed that the initial timeframe would not be enough to complete the construction. He found this to be a reasonable request and Mr. Parrott concurred.

The motion to grant an extension of the Special Exception through December 31, 2009 was passed by unanimous voice vote.

C. Request for Extension – **150 Route One By Pass**

Mr. LeMay made a motion to grant a one-year extension of the variance as amended August 19, 2008. The motion was seconded by Mr. Grasso.

Mr. LeMay stated that, given the nature of the variance, this would allow the applicant sufficient time to complete their project. Mr. Grasso agreed.

The motion to grant a one-year extension of the variance, as amended August 19, 2008, through July 15, 2010 was passed by unanimous voice vote.

D. 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 1st floor and a dwelling unit on the 2nd 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, May 19, and June 16, 2009 meetings)*

Chairman LeBlanc announced that the applicant had requested that this petition be postponed to the August meeting.

Attorney Bernard Pelech stated that was correct. As recently as this morning, they had met with the city and there were issues which would require the Board to table it to at least next month.

Mr. Grasso made a motion to postpone the petition, which was seconded by Mr. Jousse. The motion was passed by a majority voice vote, with Mr. Parrott voting “nay.”

E. Petition of **CCV Group, LLC, owner**, for property located at **4 Sagamore Grove Road** wherein the following were requested to allow a 535 sf 1 ½ story addition with a basement and chimney to a previously approved single family dwelling in a Waterfront Business District: 1) a Variance from Article IV, Section 10-401(A)(1)(c) and to allow a residential use to be expanded in a Waterfront Business District, where such use is not allowed, 2) a Variance from Article III, Section 10-304(A) and Article IV Section 10-401(A)(2)(c) to allow: a) a 12'1"± left side setback where 30' is required, and b) a 26'± front setback where 30' is the minimum required; and, 3) a Variance from Article III, Section 10-301(A)(7)(a) to allow said addition to have a 75' setback from the salt water marsh wetlands and mean high water line where 100' is the minimum setback required for all. Said property is shown on Assessor Plan 201 as Lot 4 and lies within the Waterfront Business district. *(This petition was postponed from the June 16, 2009 meeting.)*

Chairman LeBlanc noted that this petition had been postponed from the June 16, 2009 meeting and Mr. Jousse made a motion to remove the petition from the table, which was seconded by Mr. Witham, and passed by unanimous voice vote.

After Messrs. Parrott and Witham advised that they would be stepping down for this petition, Chairman LeBlanc stated that left 5 members on the Board and, since 4 votes were needed to grant a petition, he noted that the applicant had the option to postpone the petition if he wished.

Attorney Malcolm R. McNeill, Jr. stated that, given the importance of this case to his client and the city, they would prefer to postpone. When he was advised that the Board would have the same number of voting members at the July 28th meeting, he requested postponement to the August meeting.

It was moved and seconded to postpone the petition to the August meeting. The motion was passed by majority voice vote, with Ms. Rousseau voting "nay."

F. Petition of **Irving Canner and Victoria D. Canner, owners**, for property located at **229 Pleasant Street** wherein Variances from Article III, Section 10-303(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow a 163 sf deck with a 5'8"± rear setback where 15' is the minimum required. Said property is shown on Assessor Plan 108 as Lot 6-4 and lies within the Mixed Residential Office district. *(This petition was postponed from the June 16, 2009 meeting)*

Chairman LeBlanc advised that the applicant had requested that the petition be postponed to the August meeting. Mr. Parrott made a motion to postpone the petition to the August meeting, which was seconded by Mr. Witham and passed by unanimous voice vote.

II. PUBLIC HEARINGS

1) Petition of **Portsmouth Navigation Corp. (Lot 45) and City of Portsmouth (Lot 46), owners**, for property located at **34 Ceres Street and the adjacent City owned property** wherein a Variance from Article III, Section 10-305(A) was requested to allow a lot line relocation resulting in the 172'± nonconforming street frontage of lot 45 to be decreased by 9.25' where 200' is the minimum street frontage required. Said property is shown on Assessor Plan 106 as Lots 45 & 46 and lies within the Waterfront Industrial, Municipal, Historic District A and Downtown Overlay districts.

SPEAKING IN FAVOR OF THE PETITION

David Allen, stated that he was the Deputy Director of Public Works and was speaking on behalf of Portsmouth Navigation. This was part of a project negotiated over a period of time where the city was endeavoring to improve access to a piece of property it owned. The property in question was adjacent to where the tugboats docked and near Poco's. Poco's was relocating its deck and the city was opening up the area and developing a public access park. To enhance the area, they had worked with Portsmouth Navigation to swap some land and relocate a dumpster structure to allow better access into a nice park. Indicating a plan of the area and the subject properties, he noted that this action shortened the frontage that Portsmouth Navigation had along Ceres Street.

Chairman LeBlanc asked if the property had been surveyed and Mr. Allen stated that it had and indicated the boundary. Ms. Rousseau asked if the abutters had been notified and Mr. Feldman responded that they had and some were working with the city to make this happen. In response to a question from Mr. Jousse, Mr. Allen confirmed that this was in conjunction with the earlier variance granted to relocate the deck at Poco's.

**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 the request was for 172' of street frontage and there didn't appear to be a nearby property with anywhere close to the 200' frontage required by zoning. The lot would still be the most conforming in the neighborhood and would present no detriment to the area.

Mr. Witham stated that helping facilitate riverwalk would actually be in the public interest. The special conditions were that, with the zoning that seemed excessive for the area, there was no way to meet the requirements. The frontage now was 181' and would never be 200' in any case. This was a historic part of town which was reflected in the frontages. He stated that this seemed to be the most reasonably feasible method to obtain access and move the dumpster off to the side. In the justice test, there would be no benefit to the public in denying the variance and there would be no diminution in the value of surrounding properties.

Mr. Grasso noted that they were losing some on frontage but were also gaining in lot area.

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

2) Petition of **Michael A. Kuchtey and Barbara A. Kuchtey, owners**, for property located at **6 Sagamore Grove** wherein a Variance from Article III, Section 10-301(7)(a) was requested to allow the expansion of a structure within the 100' inter-tidal zone adjacent to Sagamore Creek (use variance); a Variance from Article IV, Section 10-401(A)(1)(b) is requested to allow a nonconforming use to be extended into another part of a building or structure; and a Variance from Article IV, Section 10-401(A)(2)(c) is requested to allow a nonconforming building to be added to or enlarged where such addition or enlargement does not conform to all regulations of the zoning district. Said property is shown on Assessor Plan 201 as Lot 5 and lies within the Waterfront Business district.

Chairman LeBlanc advised that the applicants had requested that the petition be postponed to the August meeting.

Mr. Grasso made a motion to postpone the petition to the August meeting, which was seconded by Mr. Witham and approved by unanimous voice vote.

3) Petition of **Tyler Hayes Kelly, owner**, for property located at **30 Sewall Road** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow the expansion of a non-conforming building with a 27.5'± frontyard setback where a 30' side yard is required. Said property is shown on Assessor Plan 170 as Lot 16 and lies within the Single Residence B district.

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernard W. Pelech, speaking on behalf of the owner, stated that this property had been part of the Westfield Park subdivision back in the 60's. The setback then was 25' which was reflected in the homes along Sewall Road. The applicant recently purchased this property which has special conditions due to former subdivision. Referring to the submitted plans, he stated that they want to expand to a two car garage, which would have a front yard of 27½'. Attorney Pelech held up a cardboard cutout representing a 9 s.f. area of encroachment into the front setback that was the entire area requiring a variance, due to the nonconformity of the existing structure.

As outlined in his memo, Attorney Pelech stated that this change would not affect the public health, safety or welfare and there would be no additional demands on municipal services, no additional water or sewer. The special conditions were that the property was located on a cul-de-sac, created by a subdivision where the setback had been 25'. While the home was actually

located over 40' from the edge of pavement, it was 27' from the right of way. After 1961, the ordinance was amended to require 30' front setbacks. The Planning Department had indicated that they could move the addition back 2½', but this was not reasonably feasible. It would be much more expensive and would create a situation with the garage set back differently from the house. It made sense to continue the front façade of the building.

Attorney Pelech stated that the request was so minimal for this 9 some s. f. of encroaching lot area that it would not be against the spirit of the ordinance, which was also to allow orderly development of residences. There would be adequate light and air and emergency access. There would be no overcrowding of land, no intensification of use, and no detriment to the character of the neighborhood as all the homes built before the ordinance had the same setback. He stated that the hardship on the owner were the variance to be denied would not be outweighed by any benefit to the general public. The property was still 40' from the edge of the pavement so there would be no effect on the public interest, but it would be expensive to have to move the addition back. Noting that no neighbors had spoken in opposition, he stated that the house would now be more aesthetically pleasant so there would be no diminution in surrounding property values

Ms. Rousseau asked if the subdivision had an association and had all the property owners been notified. Attorney Pelech stated there was no association and no restrictive covenants. All owners had been notified.

Mr. Parrott asked if moving the garage back 2.5' would make it violate the rear setback. When Attorney Pelech stated it would not, to his knowledge, Mr. Parrott noted that he had just scaled it off the plan and he thought it would. His point was that either way a variance would be required. Attorney Pelech stated he had not scaled it off, but Mr. Parrott might be correct. In response to a question from Ms. Rousseau, he stated there was no intent to convert the garage to an apartment. It was a simple two car garage with access to the dwelling.

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

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

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

Mr. Parrott stated that the neighborhood was residential and pretty uniform so the variance would not be contrary to the public interest. In this case, there was no hardship inherent in the land but perhaps the change in the ordinance over time would be a special condition resulting in a hardship. Also, the house was in an unusual position on a curve in the road which was formerly a cul-de-sac. Another special condition was the placement of the house on an odd shaped lot, which was not a typical rectangle. Because of the curving front and needing the garage at the front, there were not many choices in its placement. He stated that it was in the spirit of the ordinance for people to improve their property as long as there was no infringement

on others' rights. In the justice test, the balance tipped in favor of the applicant and the demonstrated relatively small area of nonconformance, as demonstrated, was most pertinent. The value of surrounding properties would not be diminished. This was pretty obviously a single garage converted to a double which was attached to the house and would not affect any other property.

Mr. LeMay stated that he would find hardship in the funny shape of the lot and the circular frontage. There was no public interest here and, if they were to move the garage back, it might encroach on the rear setback.

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

4) Petition of **Timothy G. Griffin, owner**, for property located at **172 Elwyn Avenue** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow for the construction of a mudroom and stairs with a building coverage of 32% where 25% is the maximum allowable coverage. Said property is shown on Assessor Plan 112 as Lot 39 and lies within the General Residence A district.

SPEAKING IN FAVOR OF THE PETITION

Mr. Tim Griffin provided a brief history of their ownership which included seeking a variance in 2004 to enclose an existing deck to make a sunroom and add a little deck off to the side. That would have increased the square footage from 32% to 36% where the maximum allowable coverage was 35%. 11% of that figure was for a barn with no electricity which they want to keep as it is. On finishing the sunroom, the deck would have taken up 120 s.f. of the lot. What was never finished was a 5' x 5' landing outside the door with a set of stairs for a little under 60 s.f. He stated that the sunroom has a low pitched roof and all the snow melt comes off that side of house and pours directly over door. They put up a gutter system which cannot keep up and it melts and then freezes at night, making the major entrance to their house unusable and unsafe. Mr. Griffin explained how they would extend out the landing leaving a 3' gap between the house and then the stairs. The net add of 73.5 s.f. would still be under the original allowance granted in 2004.s.f.

Mr. Jousse asked if the 3' between the end of the stairs and the house would be enough space and Mr. Griffin stated that the drip line was right in front of the door so it should be more than enough.

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 applicant was seeking to solve a wintertime problem which caused a hazard to his property with ice and snow melt coming down on stairs and even made it hard to open the door with the ice built up. He saw no public interest in this proposal. The hardship was the need to move the stairs 3' from the building to allow snow and ice melt to land on the ground and not the stairs. The special condition was that this was a small lot to begin with and they had considered other avenues to alleviate a hazardous condition and this was the most reasonably feasible. In the spirit of the ordinance, safe egress was vital. He stated that there would be no benefit to the public in denying the variance and the value of surrounding properties would not be diminished.

Mr. Witham stated that this was a modest proposal which addressed a problem in a way that had the least impact. Considering what had been granted in 2004 they could have asked for more. He noted that the lot was unique in being abutted on three sides by public streets and the stairway and bumpout were as far away as possible from neighbors.

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

5) Petition of **Michael Dickson and Tracey Graffam, owners**, for property located at **43 McNabb Court** wherein Variances from Article III, Section 10-302(A) and Article IV 10-401(A)(2)(c) were requested to allow an 8'± setback from the left side lot line where 10' is required. Said property is shown on Assessor Plan 112 as Lot 56 and lies within the General Residence A district.

Mr. Witham stepped down for this petition.

SPEAKING IN FAVOR OF THE PETITION

Mr. Mike Dickson stated that they would like to add a two story addition off the rear to provide some badly needed storage space and a small bathroom. One half of the existing foundation currently supports a small addition and deck and they would like to build on the rest as well as install a deck which would be enclosed with rails and screening. The 8' setback would remain the same as the existing footprint. He felt it was the most reasonably feasible solution to use the uncovered foundation, rather than having to cut it back 2'. Presenting a petition of support, he stated that the change would meet the spirit of the ordinance and property values would not be diminished. In response to a question from Mr. Jousse, Mr. Dickson stated that they were going to replace the stairs in kind.

Mr. Ben Otis stated that he lived at 46 McNabb Court and felt there would be no problem with property values. He supported the proposal.

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 BOARD

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

Mr. Parrott stated that this was a relatively small and straightforward application. More or less centered in their backyard, there would be no effect on the public interest. The special conditions were that this was a small lot in a neighborhood of similar lots. The side most directly affected faced upon a dead end street so there was no neighbor right across the property line in question. He noted that extending the building along the same façade would not change the relative distance from the house to the property line and the proposed expansion would not harm the lot coverage. Looking at the house and the existing situation, there was no other good choice. It would be in the spirit of the ordinance to allow people to expand, barring any harm to neighbors and none were harmed here. There was no overriding public interest which would argue against granting the variance and values would not be diminished. The house was very typical of the neighborhood and, if anything values would increase.

Ms. Rousseau agreed, noting that the footprint would not be changed. The bedrooms were small and she could understand the desire for additional space. The historical character of the home and neighborhood would not be affected.

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

Mr. Witham resumed his seat.

6) Petition of **Peter H. Rice and Meghan Milne, owners**, for property located at **196 South Street** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow the expansion of a nonconforming building along with a right side yard setback of 4'2"± where a 10' side yard setback is required. Said property is shown on Assessor Plan 101 as Lot 67 and lies within the General Residence B district.

SPEAKING IN FAVOR OF THE PETITION

Mr. Peter Rice stated that he lived at 196 South Street and had some letters of support, which he distributed along with some photographs. They were requesting a variance for the setback requirement. The existing building was made up of two sections, one of which was built in 1865 and the shed addition off the back was, they believed, built in the 1940's. Both the original building and the additional shed addition off the back were approximately on the existing setback, right around the property easement of the street right of way and there was really minimal if any setback. The proposed change would be to tear off the shed addition and slide it back about 4' from the existing wall. The reason it couldn't go farther back was that the

existing structure had circular flow and 10' would push it past the access into the front room and would deny circular flow for that structure.

Mr. Rice stated that nothing would be changed in terms of the public benefit and there would be no negative impact on property owners. Light and air would not be affected, nor the value of surrounding properties. He stated that any public benefit in denying the variance would be insignificant compared to the hardship on him. He noted that the existing shed addition was dilapidated and in need of replacement which should actually enhance values.

Mr. Jousse asked if by circular flow he meant the flow of traffic in the house and Mr. Rice stated, "yes." This would allow better access and flow between the two sections.

Mr. LeMay asked if it was a one, two or three story addition. Mr. Rice indicated it was a single story. He had a drawing if the Board would like to look at it, although it was only the first draft. Mr. LeMay stated it would make a more complete application.

Mr. Rice approached the dais to point out for Mr. LeMay and Ms. Rousseau where the addition would sit on the property. Mr. Feldman stated that he could leave the plan and they would be sure he received a copy back. Mr. Jousse asked if he was contemplating replacing the asbestos siding on the house and Mr. Rice said eventually, but right now they were looking for functionality.

Mr. Witham stated that he believed Mr. Rice had indicated that the one story bumpout at the rear was 10' from the granite curbing and would go to approximately 14'. Mr. Rice stated that was correct. Ms. Rousseau questioned whether the building coverage would be decreasing. Mr. Rice stated it would be approximately the same. He had adequate lot coverage and was not seeking a variance for that. Ms. Rousseau stated again that it was, though, going to decrease and Mr. Feldman stated that it would by a few square feet.

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 Ms. Rousseau.

Mr. Witham stated that this would be bringing a structure into greater conformity and also deal with a 10' side setback. This would actually be 14' away from the curbing and public space and the remainder was a buffer. With greater conformity, the change would not be contrary to the public interest. The special conditions were the position of the existing structure. They were trying to put an addition up against the property line and at an angle. There was no other method which would facilitate the circular flow of the interior of the house. The Board could say it had to be moved back but, in reality, if denied, the existing addition would remain in place and the lesser nonconformity would not be gained. The spirit of the ordinance would be

served and there would be no benefit to the public in denying the variance. He felt that surrounding property values would not be affected.

Ms. Rousseau stated that the addition seems to be an improvement over what was there now and would reflect the value of the home and neighboring properties.

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

7) Petition of **Barbara H. Bickford, owner**, for property located at **45 Gardner Street** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow the expansion of a nonconforming structure by creating a deck and steps with a side yard setback of 8'± where a 10' side yard setback is required and a rear yard setback of 4'± where a 25' rear yard setback is required. Said property is shown on Assessor Plan 103 as Lot 21 and lies within the General Residence B district.

SPEAKING IN FAVOR OF THE PETITION

John Schnitzler stated that he was the contractor for the applicant, who had complained about the difficulty of getting into her front and side doors. When he looked, he found her entries to be too steep and totally out of code. The front was too difficult to deal with as the street was right there as they could see in the photographs. They had considered all different ways and settled on the back yard as the primary entrance. They propose to increase this porch a little bit and add a tread to try to make it a little more comfortable for her to enter. He detailed how the railing goes into the door casing and what he could do to allow the applicant to go up the steps, land on her two feet and not have to turn or step back to open the door.

Ms. Rousseau stated that she was not getting the hardship issue. Everything was tight in that neighborhood and you know that when you buy the house. She didn't see the issue with the front door and wondered why the applicant could not use that to bring in her groceries. Mr. Schnitzler stated that was more treacherous than the back and explained that the risers were tight and nonconforming to code. There was only a right hand side rail.

Mr. Witham asked for clarification of the site plan on tax map 103 where the property line was highlighted, which looked different from the line cut at an angle. Mr. Schnitzler stated that he had been told these were photographed from aerial photographs and get skewed a little. The house line was the actual property line. The first map he provided showed the line when the house was purchased but they had it straightened and brought to the house. That map also shows the deck as it now exists.

Mr. Parrott questioned a discrepancy on the tax map submitted which showed 5' of steps and 8' to the property line, totaling 13', yet on the same drawing the same distance was labeled 11'8". He stated they couldn't have it both ways. There followed a discussion of the dimensions on the map with Mr. Schnitzler ultimately confirming that, on the tax map, the 8' figure should be 7'. When Mr. Parrott asked him if he was sticking with the 5' directly off the foundation for the steps and the porch, Mr. Schnitzler stated, "yes."

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

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

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

Mr. LeMay stated that this was not the sort of variance that would be requested unless someone actually needed it, nor would they go to this expense just to make steps a little bigger. He felt this was a minor variance which would have a major impact on the quality of life for the applicant and that the situation could cause a hardship. He stated that there was no public interest involved in making the steps a little bigger. There was no practical alternative. The special condition was the existing nonconforming use in a tight area. It would be in the spirit of the ordinance and justice served to provide safety without affecting light and air. He saw no reason to believe that the value of surrounding properties would be diminished.

Mr. Witham agreed, adding that although one can argue that the stairs function, the angle was hazardous. The setbacks are to preserve light and air and this did not impinge or increase the volume of the structure. There were no windows on that side of the building of the abutter most impacted and he saw no adverse effect on the neighbors.

Ms. Rousseau stated that she could not support the motion as she did not believe it met the criteria II(B)ii, no other reasonably feasible method could be achieved. She saw no hardship and did not see why the stairs could not be altered. They were right up against the next door neighbor and this would push it closer to the window that was actually on the first floor of the neighbors. She saw no necessity.

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

8) **James A. Beal, owner**, for property located at **284-286 Cabot Street** wherein Variances from Article III Section 10-301(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow the expansion of a nonconforming structure along with a 8’8” side yard setback where a 10’ side yard setback is required Said property is shown on Assessor Plan 144 as Lot 25 and lies within the Apartment district.

SPEAKING IN FAVOR OF THE PETITION

Mr. James Beal stated that his proposal was to take down a 1970’s deck and replace it with one that redirects the traffic pattern of the stairway and uses the arch detail of the existing building to enhance its value and the symmetry of the building. Granting the variance would allow better traffic flow for tenants on the first and second floors and allow the first floor tenants to have an unobstructed view from the dining room. He sent this proposal with a site plan to all

the abutting tenants and all were in favor. In this neighborhood, all ten residences were nonconforming as to setbacks. The reason for pushing into the setback was to have the staircase set off from the edge of the building along with the symmetry as he had mentioned.

Ms. Rousseau quoted the section from the criteria for granting a variance dealing with no other reasonably feasible method to pursue. She stated that the design was quite beautiful and definitely looked better, but asked if the applicant could speak to why it could not fall within the appropriate setback. Mr. Beal stated that if he moved the staircase back from the setback, it then falls covering the posts and they lose the architectural integrity and symmetry. He stated, “correct” when Ms. Rousseau asked if that was the stairway coming down into the driveway area would be very close to the entryway on the first floor.

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

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

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

Ms. Rousseau stated that the variance would not be contrary to the public interest. She had seen no evidence that it would in any way affect the public interest in this particular application. They were talking about the back of the building so she didn't see any issue with the public interest. Regarding special conditions of the property, she stated she had taken a look at the pictures of the configuration of the rear of this building and it appeared there were special conditions. In order to make this improvement to the property for the good of everyone, the residents, a variance would be needed to make an appropriate stairway into the back parking area. Regarding another reasonably feasible method, she stated she had been persuaded by the applicant's argument that the stairway configuration, that any other way would impede the foot traffic into the ground level apartment and she was looking at the design and it was very well designed as compared to what was there now and it would only be a win/win for all parties to have this variance approved.

As far as the setback ordinance was concerned, Ms. Rousseau stated it would be in the spirit of the ordinance to grant the variance as they want to make an improvement on the property where necessary with very little, influencing others as little as possible and she didn't see this was an issue here. She stated that, in this case she believed that substantial justice was done. The property owner can use this property in the way he sees fit and it was an improvement for the residents living in this area and they also increase the property value as well so the value of surrounding properties would not be diminished. There was no evidence of that there that day so she thought it was a nicely designed back stairway to this particular property and she would encourage people to grant in favor of it.

Mr. Jousse stated that he believed the stairs could be placed on the other end of the porch, but that would impede easy access to the patio downstairs and present a hazard between the patio

and the driveway, impeding the natural flow of traffic from the driveway to the rear of the residence. The intrusion into the side setback was less than the existing dwelling so he could approve it.

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

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