

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

MUNICIPAL COMPLEX, 1 JUNKINS AVENUE

EILEEN DONDERO FOLEY COUNCIL CHAMBERS

7:30 p.m.

December 20, 2010

MEMBERS PRESENT: Acting Chairman David Witham, Charles LeBlanc,
Carol Eaton, Thomas Grasso, Alain Jousse, Charles LeMay,
Alternate: Derek Durbin

EXCUSED: Arthur Parrott, Alternate: Robin Rousseau

ALSO PRESENT: Principal Planner, Lee Jay Feldman

The meeting was called to order at 7:30 p.m. by Acting Chairman David Witham. He welcomed everyone to the meeting and for coming out a night early for a meeting that was not regularly scheduled.

In the absence of Mr. Parrott, Mr. Durbin assumed a voting seat.

I. NEW BUSINESS

Acting Chairman Witham advised that the first order of New Business was a change in meeting date and time and he asked Mr. Feldman to comment.

Mr. Feldman stated that under the Board's Rules and Regulations, the time and date of the regular monthly meeting may be changed by a majority vote of those Board members present at a meeting. Since this is a non-regularly scheduled evening, the Board needed to take an action to approve that evening's meeting. It was moved, seconded and passed by unanimous voice vote to change the regular meeting date for this month to December 20, 2010.

The next order of New Business was the election of officers. Acting Chairman Witham noted that former Chairman LeBlanc had stepped down, but he will join the Board until the regular position is filled and was sitting that evening. He stated that the Board needed to elect a new Chairman and Vice-Chairman. Mr. Jousse nominated Mr. Witham as the new Chairman for the Board of Adjustment, which was seconded by Mr. Durbin and approved by unanimous voice vote. Now Chairman Witham thanked the Board, indicating that he had big shoes to fill. He then

nominated Mr. Parrott for Vice-Chairman, which was seconded by Mr. LeBlanc and approved by unanimous voice vote.

II. APPROVAL OF MINUTES

A) Board of Adjustment Meeting September 28, 2010

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

B) Board of Adjustment Meeting October 21, 2010 and November 18, 2010

Chairman Witham indicated that the Minutes to these meetings had just been provided and would be voted on the next evening, December 21, 2010.

III. PLANNING DEPARTMENT REPORTS

Chairman Witham indicated the next order of business was the Planning Dept. report on the Rules and Regulations and turned it over the Mr. Feldman for the update. Mr. Feldman stated that he had sent to the Board members, per their request, copies of some suggested wording on the Action of Alternate members. He wasn't asking for anybody to take any action that evening. Some emails had come through with comments. Mr. Feldman had also sent along for them some additional research on how alternate jurors are asked to participate or not participate in court room proceedings, as Mr. Parrott had requested. He also provided them, out of "New Hampshire Town and City" magazine, a case of municipal significance, in which there was a ZBA lawsuit that they might recognize.

Chairman Witham suggested would be most effective to e-mail any further comments to Mr. Feldman so that he could get a sense of where the Board is. It will help him polish up the language and, hopefully, within the next month or two, they will be able to make a motion on one of the options he gives them.

Mr. LeBlanc suggested for the record, they could state that Mr. Durbin is sitting in for the entire meeting. Chairman Witham then stated that everyone present will be sitting. There is a full Board. They did have a few petitions where one Board member will be recusing himself, so there will be six voting members on those.

IV. OLD BUSINESS

A) Case #11-4
Petitioners: NIP Lot 2, LLC NIP Lot 5/6, LLC & Maplewood & Vaughan Holding Co.,
LLC Property: 111 Maplewood Avenue Assessor Plan 124, Lot 8
Zoning district: Central Business A

Requests: To allow 2 drive-through lanes as an accessory use with a retail bank in the Downtown Overlay District
Variance from Section 10.440, Use 19.40 to permit a drive-through facility as an accessory use to a permitted use.
Variance from Section 10.836.22 to permit a drive-through facility with 2 lanes associated with a building of 3,000 sf where a minimum of 5,000 sf of associated building area is required for each drive-through lane.

Chairman Witham read a letter from the attorney for the applicants advising that the application had been withdrawn.

II. PUBLIC HEARINGS

Mr. Grasso recused himself from the following case.

- 1) Case # 12-1
Petitioners: Favaloro Revo Trust, Christopher and Carol Favaloro, Owners
Property: 275 McKinley Road Assessor Plan 250, Lot 18
Zoning district: Single Residence B
Description: To convert a deck to a 3 season room with less than the required rear yard.
Requests: Variance from Section 10.521 to allow a 17'4" rear yard where 30' is required.
Variance from Section 10.521 to allow building coverage of 22% where 19.5% currently exists and 20% is the maximum coverage allowed.

SPEAKING IN FAVOR OF THE PETITION

Mr. Matt Erickson stated that he was speaking on behalf of Chris and Carol Favaloro who would like to enclose their existing deck with a three-season, unheated sunroom/porch. In applying for a building permit, they discovered their deck was too close to the rear property line by today's zoning regulations. Also, by enclosing the deck, they are increasing the building coverage by 2%, for a total of 22% where 20% is required. The existing home is single family and it's located in a neighborhood which is predominately single family. The sunroom will be an aluminum/glass structure with screens and will allow the applicant to enjoy the use of their back yard during inclement weather and when the insects are out. He had provided the Board with a packet of information. On the first page plot plan, they could see that there is an existing family room and the deck they are proposing to enclose is attached to that. He pointed out that the current deck is 12' x 16' and the sunroom they would like to put up is 14' x 16' so they would like to increase it by 2' to the left, but not any closer to the rear property line. The second page is a facsimile of the sunroom they wish to build which was unheated and strictly a three-season porch. The third page is a list of the three immediate abutters to whom they had spoken in order to make sure that what they wanted to do would not impact them. They all agreed that would be fine if the Board approved the variance. He also provided the Board with some pictures. Chairman Witham asked if they were of the existing deck. Mr. Erickson confirmed they were and passed them to the Board. The pictures show the existing deck, the existing house and there is also one view looking straight back from the house at the rear property line. You can see the privacy fence back there

as well as some well-established vegetation and landscaped screening between the yards. You can also see into the back yard of the rear abutting property that looks like a four-season porch on the back of that house.

Mr. Erickson addressed the five criteria, stating that granting of the variance will not be contrary to the public interest. The proposed sunroom would be built on an existing deck behind the home. Its use is consistent with other houses in the neighborhood. The proposed use will observe the spirit of the Ordinance because the proposed use will not alter the character of the neighborhood or threaten public health or safety. The use is behind the existing home and cannot be seen from the street and there is a lot of established landscaping, fencing and screening in the back yard. The deck and the family room are existing so the encroachment will not be increased. He stated that substantial justice will be done to the property owner by granting the variance. The proposed sunroom will not harm the general public or neighbors while the variance will allow the owners to enjoy their back yard during inclement weather and in the evening. The proposed use will not diminish values of surrounding properties. The sunroom will increase the value of the home and not negatively impact the surrounding properties. Finally regarding the hardship question, Mr. Erickson stated that special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship. The existing house is positioned on the lot so far back from the front street that it doesn't allow expansion in the rear without a variance. The house, the family room and the deck pre-date today's zoning regulations. He understood, in talking with Mr. Feldman, there has been some discussion about possibly modifying the regulations for this district in the future because so many homes in that area are in the same situation. They can't meet today's zoning.

Mr. LeMay asked Mr. Erickson to describe the construction of this room. What is the floor all about? Does it still remain the deck? Mr. Erickson confirmed that was correct. The floor is a wood deck. Mr. LeMay asked if it will be the same deck that is currently there. Mr. Erickson indicated no, he will replace that with a new deck that is pressure treated. Mr. LeMay asked if it would be similar, just wood slats? Is there drainage through it or is it solid floor? Mr. Erickson indicated that the sunroom has a solid roof so it will have a PT frame with a plywood subfloor and the walls themselves are aluminum frame.

Mr. LeBlanc noted that the existing deck is 12' x 16' and this new room is going to be what? Mr. Erickson replied it was 14' x 16'. They will be increasing the width by two feet, but the length will remain 16'. Chairman Witham asked two feet toward the side yard? And Mr. Erickson confirmed that was correct.

Ms. Eaton asked what the purpose of the two extra feet was, because that puts them over the lot coverage. Mr. Erickson indicated that was the size of the sunroom, it's the standard size of the sunroom that comes as a kit.

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

Mr. LeBlanc felt what was interesting in the particular application is that the lot is of a different size and proportion than the lots that are around it. All the houses on the street seem to be the same distance back from the street; however, this has a shorter backyard because it's squared off against the yard in back. He thought that made the yard unique in that sense and so therefore this application could be granted. This wouldn't be contrary to the public interest. There is no reason why the public should care one way or the other if this porch or sunroom is a couple of feet longer and a couple of feet closer to the rear yard. There would be substantial justice. The spirit of the ordinance he believed is observed because the encroachment is not vastly increased on any of the setbacks. Granting the variance will not diminish the values of the surrounding properties either in back or on the sides and the unnecessary hardship, as he stated earlier, is the size of this lot in relation to the others within the area and therefore this should be granted.

Mr. Jousse stated the only thing that we would add or emphasize is that the rear setback of this three-season room will not be any greater than what is there already, the addition to the rear of the dwelling. Otherwise he agrees with everything Mr. LeBlanc stated.

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

Mr. Grasso resumed his seat and Chairman Witham recused himself from the following case. In the absence of a Vice-Chairman, the gavel was turned over to Mr. LeBlanc.

2) Case #12-2

Petitioners: Terrence H. and Andrea B Allen, Owners

Property: 32 Baycliff Road Assessor Plan 207, Lot 43

Zoning district: Single Residence B

Description: To construct a front entry way with less than the required front yard and more than the allowed building coverage.

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

Variance from Section 10.521 to allow a front yard of 16' where 30' is required.

Variance from Section 10.521 to allow building coverage of 28% where the existing coverage is 26% and 20% is the maximum coverage allowed.

SPEAKING IN FAVOR OF THE PETITION

Mr. Terrence Allen introduced himself as the owner of 32 Baycliff Road. He resides there with his wife and three children. He had come before the Board to request the two variances in order to build a roof over the proposed front porch of the house. The porch as seen in the submitted plans is 80 sq. ft and meets the zoning requirements because it is less than 18" off the ground.

The applicants would like to build a roof over it as it will provide valuable protection over the front door from the elements and afford them a small sitting area to watch over their kids playing in the front yard on a year round basis. Without the roof, the front area of the house is directly exposed to the elements and they have already had to repair the front area due to some weather damage. With the angles and the way the water drains off the house, a roof will help. They also appreciated that fact that they did receive a variance nine years prior to build their rear addition and regret that they didn't have the foresight, time and money to provide a covering and planned for that for the front of the house and ask for that at the same time. Mr. Allen stated they would do their best to address the variance criteria stated in the zoning ordinance.

Speaking in terms of the variance criteria, the applicants felt the porch is tastefully designed and in no way will alter the essential character of the neighborhood, nor would it threaten the health, safety and general welfare of the public. Regarding the spirit of the Ordinance, they felt the porch will not be contrary.. It will be open on the sides. It will not affect light or air for their neighbors. The front setback they sought is consistent with their neighborhood. If the house were on a conforming lot, the coverage would be less than 12%, so they didn't feel they were overdeveloping in any way. They didn't feel that their gain with the front porch outweighs any injustice to the public. Their neighbors have all shared their support for the proposal and they had signatures from several of their direct abutters. The fourth point is they didn't have any reason to believe that this modest addition will diminish any property values of their neighbors. The fifth point is hardship. They felt this was a reasonable use of their property to construct a roof over the small deck that is allowed by zoning. The roof will provide valuable protection from the elements over the main entry to the house and they felt that once the City developed the zoning Ordinance for this older neighborhood, it created a special condition for their home because the front setback required now runs through the middle of the main house and the lot was half the of the required size. This in essence froze the house in time for moving forward without any reasonable improvements. He stated again that they did appreciate that they received a variance nine years prior for the work that they did and he wished they had had the time, foresight and money to have done a more comprehensive improvement to the home and he thanked the Board for its consideration of the proposal.

Mr. LeMay stated he had a hard time seeing how this was substantially different than most of the houses in the area. In fact, most of them are very similar to the applicants', very similar setback, very similar fronts to the house. In looking at the aerial, he asked if it was a shed or garage out back. Mr. Allen confirmed it is a shed. It's a single-car garage that was there originally. Mr. LeMay stated that it had pretty good development on the property currently, from what he can see in terms of the way the property has been developed. So he stated it would difficult for him to get a grasp on the hardship and asked the applicant if he wanted say anything further about that. Mr. Allen indicated he thought it was the quality of life hardship where they do spend a large percentage of time outside with their children. They have a young family and in the neighborhood there are other kids and the spirit of the community to play outside. Many times, even on an evening like the present one, if it were snowing or such, they would sit outside and watch the kids from that vantage point. Any time they enter or exit the house the way it currently is, even if you're just checking the mail, you open the door and you're potentially in a driving rain. The sun does come down on it from that perspective. So to address the elements portion of it, undue hardship from the heavens you might call it, and everyone, it's true, is subjected to it. On their particular street, the lot sizes are all slightly different. On the other side of their house,

one of their neighbors who is in support of this, has a lot which they call a double lot. They can continue to build, up until they met that percentage criteria and it would conform, but it would not be in the spirit of what they were looking to do. The front aspect of the house wouldn't change dramatically. It's only improved. And again, the only real addition is the roof area, as the porch, they could just put up a little decking material to achieve what they were after for a sitting area.

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

Ms. Eaton stated the applicant would like to encroach further into the front yard setback of this home and increase the lot coverage. The lot coverage allowance is 20 percent; currently there is 26% and this would bring it to 28%. This front yard setback they have now is 21' and this would decrease that to 16', which she thought was atypical for the neighborhood. She didn't see anything unique about the property that would be considered a hardship and she believed that the reasons that the applicant would like this variance are good reasons, but they are not allowed under the law for a variance. They are not things that can be considered as a hardship. So she believed that the lot coverage extension is not supportable and that encroaching further into that front setback is not either.

Mr. LeMay stated he agreed with those comments and they were pretty much his concerns as well.

Mr. Grasso stated he would be supporting the motion. He agreed the applicant has some concerns, but as Ms. Eaton alluded to, they are not under the criteria the Board has to go by. He felt denying this was the proper course and he would be supporting the motion.

The motion to deny the petition as presented and advertised was passed by a vote of 5 to1, with Mr. Jousse voting against.

Chairman Witham resumed his position as Chair.

- 3) Case # 12-3
Petitioners: John F. Donohue Revo Trust, ½ and Patricia L Donohue Revo Trust
Property: 87 Ash Street Assessor Plan 150, Lot 33
Zoning district: General Residence A
Description: To allow the construction of a new 2 story addition and porch on the left side of the existing home.

- Requests: Variance from Section 10.321 to allow the expansion of a nonconforming structure.
Variance from Section 10.531 to allow a building coverage of 26% where the current building coverage is 23% and 25% is the maximum coverage allowed.

SPEAKING IN FAVOR OF THE PETITION

Mr. John Donohue introduced himself and his wife, Patricia, as owners of the property at 87 Ash Street. They were present to seek variances for a two-story addition to their house. The primary drivers were, they have three children with one shower in the house, so mornings are rather busy in the house. Their two daughters currently share a bedroom which is not extremely large and they would like to get another bedroom for the daughters so that they had a bedroom for each of the children. Referring to the packet of information, he noted the Board would find some architectural drawings and renderings of what it would look like, pictures of the existing side of the house they were looking to add to, a drawing of what it would look like afterwards and a letter with some signatures of their direct abutters.

In regard to the criteria, they believed it does substantial justice because it will allow them appropriate space for their family. They do believe it is in the public interest. They would like to stay in the neighborhood. All their children have attended Little Harbor School and Portsmouth Middle School thus far. They do not believe it is contrary to the spirit of the ordinance. It will allow them to live there. They have lived there since 1997. As far as diminishing the values of surrounding properties, in fact they felt it would add to the value of their house and hopefully the neighborhood it's in. And finally, with regard to the hardship, as he spoke earlier, the bathroom is really key to the household at this time. This will provide another bedroom and it gives them the ability to expand some living space on the first floor.

Mr. LeBlanc asked if, currently with this addition, they would still be able to meet all the setbacks, front, side, rear. Mr. Donohue indicated that was correct and they only need the coverage variance.

Ms. Barbara Bertrand who lives right across the street from the applicants came forward and stated she had seen all the drawings and she thought it looked really great and she felt it was going to just add to the house. It will look like it has been there all along and she totally understands their issue of space.

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 approve the petition as presented and advertised. Mr. Durbin seconded.

Mr. Grasso stated there was a request in front of the Board to add an addition to the left side of their house as you look at it from the street. In comparison, it looks to be small, but he felt it will afford the applicant some additional much needed living space and he believed the Board could support this. The variance will not be contrary to the public interest. There is no real public interest under this except for the neighbors and the neighborhood directly affected. They had one neighbor speak in favor of this. The spirit of the Ordinance is observed. There is sufficient room. It met all the setbacks. This is just a coverage variance in front of the Board. Substantial justice will be done. There was no great factor in denying this. The values of the surrounding properties will not be diminished. He thought the hardship case on this was the way their house sits, kind of over to one side. The right side of the house is about 3' feet from the property line. The proposed addition for this house is about the only way they can go and they did do it within the setback and they were present just for the coverage, so he felt he could support this.

Mr. Durbin stated he would support most of the points Mr. Grasso had made. The only thing he would add is that it's a pretty negligible difference in the increase of the building coverage. It's a nonconforming structure, an addition. What was being proposed, if you look at it, it's about as minimal as you could expect for something that will accomplish the purposes proposed here. So for those reason, he would support the motion.

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

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- 4) Case # 12-4
Petitioner: Barbara O. Bertrand, Owner
Property: 88 Ash Street Assessor Plan 150, Lot 39
Zoning district: General Residence A
Description: To allow a generator 2' from the right side lot line where 10' is required.
Request: Variance from Section 10.572 to allow an accessory use/structure 2' from the side yard where 10' is required

SPEAKING IN FAVOR OF THE PETITION

Ms. Barbara Bertrand, owner of the property came forward and re-introduced herself. The property is a duplex. She has a tenant who lives upstairs and she lives downstairs. She was present to request a variance to the property line where the generator is to be placed. She needs to place it 2' from the property line as opposed to 10'. The packet material showed the house position so that the Board can see where the neighbor's house is placed. The house is actually 42' from the property line. And there would be the 42' plus a garage that would be between the generator and their house. There is letter in the packet which indicates the neighbors' support. She also enclosed pictures and photographs showing where it would be placed. She stated she originally wanted to place it to the left of the house. That's where she thought it would be best because going in there directly would be where her electrical box is, but when she spoke to some electricians, she then realized it has to go down 18" to dig and she has a beautiful old maple tree there with many roots and realized it would not be possible. Her backyard is what she considers

her outdoor living space, but it also has a lot of tree roots, so she had to look at the right hand side of the house, which wasn't her first choice, but it is the best site.

She felt the variance would not be contrary to public interest since that was, she believed, about big structures. She had enclosed a picture of the proposed generator and the dimensions of it, which is 48" x 54" x 29". She thought the spirit of the ordinance will be observed in that her neighbors will be protected. She felt that substantial justice would be done because she would be able to have a generator. She felt it would not diminish the values of surrounding properties. She plans on placing some bushes in front of it so the side of it would not be visible from the street. Regarding her hardship, she decided to look into getting a generator after the last winter we had. Her primary problem was the sump pump. She ended up with 2' of water in her basement several time when the power went down and she ended up with a really bad mold and mildew problem which cost her a lot of money in getting it taken care of. So she is hoping that by having a generator it will take care of the sump pump. In addition, it will be nice to know that she will be able to provide heat for her neighbor and herself if the power goes out.

Chairman Witham asked if this generator is the type that runs once a week. Ms. Bertrand confirmed yes, for 12 minutes. Chairman Witham asked if she can determine what day that is or when that happens. Mr. Bertrand indicated she had spoken to an electrician and he said the primary thing to do is to try and do it during the day when she was home, because she would want to know that it has run for the 12 minutes and since she is a recently retired teacher, she has that luxury now. Chairman Witham stated she needed to be sure it wasn't at 6:00 a.m. Sunday morning. She replied she can do it during the week. Chairman Witham commented it would only be for emergency purposes and Ms. Bertrand confirmed that was correct and it's natural gas and she already has natural gas.

Mr. Grasso had a question for Mr. Feldman regarding the decibel level with this being 2' from the property line. Mr. Feldman indicated that was something they discussed internally as his memo was being drafted as to how to handle that because under normal circumstances when they issue permits for walk-ins who are not seeking variances, they usually stipulate on the permit that they meet a 65 decibel level at the property line and the normal setback for that unit is 10'. In this case, where the variance would be granted for within 2' feet of the property line, the chances of that decibel level being met are slim to none. Again, under normal circumstances when they require that the decibel level be 65 dBA at the property line, they would only enforce that if there was a complaint against it. In this case, and he believed it was on the record, Ms. Bertrand had mentioned it, but the neighbor has already agreed to allow this unit to go there. That doesn't mean that this neighbor will be there all the time. It could be someone different. However, in granting the variance, there is no other way to control the sound if you will. Generators are exempt from noise when they are running under emergency situations. That is why, as the Chairman pointed out and as is stipulated here and as they do on all their other generators, they recommend or stipulate they be exercised between 7:00 a.m. and 6:00 p.m. Monday through Friday. Most people are usually at work or away from the house at that typical time period and won't be bothered by it. That's probably, in this case if the variance is granted, the only way a noise issue can be addressed.

Mr. Jousse stated he was not saying he was going to vote or not vote for this. The mitigating circumstance on this is there is a garage between the generator and the next door neighbor to

dampen the noise or at least have it bounce away. It will bounce directly across the street as a matter of fact. He did have a question, though. There is a porch with lattice around it on her backyard. Could the generator be placed under this deck? Ms. Bertrand stated that was her very first hope and the answer was no because it was considered an enclosed structure. There were no roots there, it was absolutely perfect, but even though there is lattice work it is considered an enclosed structure. She asked Mr. Feldman if she was correct about that. Mr. Feldman stated it was correct and the building code would come into play in that case. It needs to be 5' from any wooden structure and this would be considered an enclosure. Mr. Jousse asked for verification that it would be 5' from the neighbor's garage. Ms. Bertrand confirmed that was correct. She stated it was 7' from her neighbor's garage.

Ms. Eaton assumed she considered putting it in her back corner because her yard looked like it has enough room to meet the setback. She didn't see any trees there, but to run an electrical wire 18" down along the side of the house is probably doable. Ms. Bertrand stated the problem is tree roots. There is a pine tree there between that corner and her house and there is not direct access. There's a patio that isn't shown, there's a shed, and there's a tree. She stated she was actually standing in that corner taking the pictures provided. Ms. Eaton stated that she was a little stumped on this because, the garage will mitigate some of the noise, but she has seen so many people put these in inconvenient locations in their yard to make a setback so she hesitated to grant these variances.

Chairman Witham indicated the reality is you can always find someplace to put this, but what the Board needs to decide is whether what she is asking is reasonable. He thought it was probably worth noting that these units do lose some of their power the farther the run is from the electrical panel in the house. So there is some loss there for the applicant. So what is before the Board is there is no argument she could find someplace on the property but is this reasonable and the potential damage to offset the trees, does this offset what she is asking from the Board.

Mr. LeBlanc had a comment. Having a generator with a garage near it may direct the sound forward or backward from the generator, but he thought it would also amplify it for the neighborhood in general and this is 66 dBA at normal load. When these things are exercised, they are supposed to be exercised under full load and that's once a week and under full load he believed the noise was quite a bit higher. So he didn't think he could support this.

Ms. Eaton put in that it was nice to think about people not being home during the day, but when she was home with her children during the day, she wouldn't be very happy about it.

Chairman Witham commented that the Board has had these in the past but it doesn't get them too often. He tended to find that 12 minutes a week is minimal intrusion, he thought, and the dBA level is still not very loud. In his eyes, it is far less time and sound than you would expect from someone mowing their lawn. And we have come to accept that as part of our season in living at home that we do have that sound. He stated he didn't have problems with the location and to him it wasn't the monster that it might appear to be and she has a right to request a variance if it's reasonable.

Ms. Bertrand added that she wanted to clarify that it was going to be 7' from the garage and the ordinance states that it has to be 5' from any structure and it will be 7' and 7.5' from the house,

so it's going to be further away from the structures than is required, although it's the setback that is the problem.

Mr. John Donahue came forward again on behalf of Ms. Bertrand. He stated he was in full support of it. Obviously, with the winters we have up here problems seem to be coming more frequently with the weather and Ms. Bertrand has a tenant. As the neighbor across the street, he has no problem with it being the neighbor across the street even if the sound does get amplified coming my way. The fact that the direct abutters are in support of it, too, makes you believe it's something worthy of consideration for the Board.

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. Mr. LeBlanc seconded for discussion.

Mr. LeMay stated the Board sees these now and then. There is no perfect place to put these things. One of the big questions comes down to whether where they want to place it reasonable and is it going to protect the neighbors from the sound and is it going to be functional from an electrical standpoint and not be the beast in the neighborhood. He thought granting the variance would not be contrary to public interest with the exception of the possible disturbance of the neighbors and the neighbors are saying they're in favor of it. The one beyond the garage doesn't oppose it and he thought there was no particular public interest involved otherwise. Granting the variance will observe the spirit of the ordinance. He thought there was a reasonable attempt to explore other site options. He felt that putting the generator between the house and the garage is probably less intrusive on the neighbors for sound than to put it on the other side of the house where the tree is. Because the sound doesn't really drop off linearly with distance, it usually carries quite a way. It will be bounced around by the garage and will be directed out of the property and he thought it will have to meet the sound level at the property line at the direction of the abutters. And it just so happens that the abutters will be relatively distant from where this is with the sound coming out from the front, rear, so forth. He felt the abutter at Lot 100 would be much more affected than the abutter at #130 would be, even though it's close to that sideline. So in his judgment, this was the place that makes the sense to put it on this lot. He didn't think it was going to diminish the values of surrounding properties. In terms of the special conditions, he thought the fair and substantial relationship is the peace and quiet for the neighbors primarily and the applicant is still going to have to meet the dBA setbacks on the front line and so forth.

Mr. LeBlanc stated those were all good points, but he felt there still is a performance standard in place and it's 65 dBA at 4' of the property line and this just isn't going to make it. For that reason he thought it was going to be intrusive on the neighbors. He thinks it would affect property values somewhat and he can't support the motion.

Mr. Jousse stated he also would not support the motion. The only reason the Board was given for having an emergency generator was to run the sump pumps. A while back during the three or four days without power, he also was without power as was the rest of the City. A small generator was all he needed to run his sump pump and, when it caught up, to plug in the refrigerator or freezer to keep his food from spoiling. He was not convinced that this was the remedy for losing power. A small, portable generator will accomplish the same thing without creating a weekly test to interfere with the neighborhood's quietness. If there were a medical condition within this building that would be a different situation, but he wasn't convinced that there is a hardship in this particular situation.

Ms. Bertrand asked if she could address that and Chairman Witham advised the public hearing was closed and there would be no more discussion.

Mr. Grasso stated he wanted to make a motion, he didn't feel it would make a difference, to add a stipulation set forth by the Planning Dept. for the hours of testing: 7:00 a.m. to 6:00 p.m. Mr. LeBlanc seconded it.

Chairman Witham stated he would be supporting the motion. He felt this was a reasonable request. He felt what the Board was looking for was a setback variance of two feet for a rather small structure. Obviously the issue at hand here is the noise that this structure makes and he felt that people will have their opinions on that. If this was ten feet away, if this generator was where that woman was sitting, she wouldn't need a variance, but if it is there, she would need a variance. For him, the sound that it made over there and sound that it made here is not going to be of any noticeable difference and that would be allowed. So he felt that 12 minutes would not diminish any property values. Any potential impact was going to be far less than a lawnmower. The person in that house would have to go around to the back side of the garage and say "yeah, that feels a little loud for 12 minutes." Anyone can pick their arguments for this as to why they are for or against it. He felt it was very reasonable. The Board has gotten hung up on these generators before. He felt to tell the applicant to just go get a portable one and haul it out of their basement when you think you're going to lose power. He felt that's a hardship. A hardship for him is listening to his neighbor with his leaf blower for two hours every Saturday and Sunday and the decibel level has got to be at least three times this. Again, he felt it was reasonable and if they lose power it's an allowed use.

Mr. Jousse stated that Chairman Witham had convinced him.

The motion to grant the petition as presented and advertised, with the stipulation that the hours of testing would be between 7:00 a.m. and 6:00 p.m. Monday through Friday, was passed by a vote of 4 to 3 with Ms. Eaton and Messrs LeBlanc and Grasso voting against the motion.

Mr. Jousse recused himself from the following case.

5) Case #12-5

Petitioners: John Cottom, Owner

Property: 139 Dennett Street

Assessor Plan 142, Lot 24

Zoning district: General Residence A

Description: To allow a new 133 sq. ft. 2 story addition to the rear of the house which violates side and rear yard requirements as well as building coverage.

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

Variance from Section 10.521 to allow a building coverage of 34% where the current building coverage is 34% and 25% is the maximum coverage allowed.

Variance from Section 10.521 to allow a 2' side yard where 10' is required.

Variance from Section 10.521 to allow an 11' rear yard where 20' is required.

SPEAKING IN FAVOR OF THE PETITION

Phillippe Favet stated he was there on behalf of Mr. John Cottom to request variances for a small addition 14' x 9'6", 133 sq. ft. The addition is located on the back of property as seen on the map and would be built on the existing footprint. The lot coverage would remain the same. The addition is mostly hidden from the street and the west side of it is two feet from the property line and is facing a big 30-foot cable end. The other side is similar setback. The back of the addition is 11' where 20' is required. It's facing the back of the property which fronts on the back of Route 1 Bypass. He felt confident that the surrounding property values would not be diminished.

Chairman Witham asked for verification that, as he read the site plan, the applicant was proposing to add a second floor addition to a little more than half of the current one-story addition. Mr. Favet confirmed that was correct. Chairman Witham asked if this was being cantilevered out over the yard. Mr. Favet said this was correct and that it was 16 inches. The addition is for a master bathroom. They have two small bedrooms they are making into a master bedroom and the only location for the addition is over the laundry room on the first floor.

Ms. Eaton stated she was confused over what was there and what was new. Chairman Witham responded that, on the site plan, the "X" that goes over all the hashes in the little rectangular box was the second floor addition. That's where all the expansion is. The hash area below it, obviously, is the existing one-story addition. Chairman Witham asked if the applicant had spoken to the abutter on the 2' setback side. They indicated they had not.

Mr. John Cottom stated that he and his wife, Lindsay, own the property. The driving factor for them to do this was to try to create a master bedroom in the house where there is none now. Their closet is actually downstairs so they simply wanted a master for living purposes. Ultimately they will have a family so they are trying to create a co-existing family footprint. Their goal was to be minimally invasive which is why they had chosen to do this over the existing footprint so they are not necessarily increasing the footprint.

Mr. LeBlanc asked Mr. Feldman, since the applicant is cantilevering this out 16", that increases the footprint. Does that affect the lot coverage? Mr. Feldman indicated it did. And one of the variances is the lot coverage. Actually, what it did though – the lot coverage is 34% where the current coverage is 34% because it is not being increased enough to bump it up over a full percentage.

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 approve the petition as presented and advertised, which was seconded by Mr. Durbin.

Mr. Grasso stated the applicant was before the Board to add a second-story on a part of their home farthest away from the street. They are doing this to try and get a little more living space without impacting the square footage of the existing house. The variance will not be contrary to public interest. The only real interest would be the abutting neighbor and the Board did not hear anything contrary from them, so other than that he felt there was no interest with this. The spirit of the Ordinance will be observed. It's not going to be enlarged at the front of the house. It's minimally cantilevered over approximately 16" and it was established it would not be enough to even raise the current coverage a full percentage. Substantial justice will be done by granting this variance. The values of surrounding properties will not be diminished. It will be a nice addition to this home. The hardship is that any other addition to this property would involve a substantial increase in lot coverage and he felt this was the minimal way to gain the addition they desire.

Mr. Durbin stated he echoed Mr. Grasso's comments regarding this application.

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

Mr. Jousse resumed his seat.

- 6) Case # 12-6
 - Petitioner: Brian M. McNamara & Sheila LaSella, Owners
 - Property: 618 Dennett Street Assessor Plan 161, Lot 19
 - Zoning district: General Residence A
 - Description: To allow the operation of a massage & polarity therapy business as a Home Occupation II at 618 Dennett Street.
 - Requests: Special Exception under Section 10.440 Use# 19.22 to allow a Home Occupation II at 618 Dennett Street.
 - Variance from Section 10.1114.32(b) to allow vehicles to enter and leave a site by backing into or from a public street or way.

SPEAKING IN FAVOR OF THE PETITION

Ms. Sheila LaSella stated she lived at the subject property and she was present to apply for special exception to allow a Home Occupation II at the subject property and this would allow

vehicles to enter and leave a site by backing into or from a public street or way. This will allow for a part time massage and polarity therapy business. Because the business will be a part time venture it will not have enough volume to create any disturbances for her neighbors regarding traffic, parking or noise. All clients will park in her driveway and there will be only one client at a time at the house. Business will only be a few days per week and she will be seeing a maximum of three to five people per day. Addressing the special exception criteria, she stated that there will be no toxic or explosive materials on the property. Because there won't be any new structures or changes to the existing building, the business does not require anything new or materials that are a fire hazard or toxic. Ms. LaSella stated that the business will not be a detriment to property values. There will be no new building constructed or anything added to the existing property to change the characteristic of the neighborhood. There is ample parking in a private driveway and cars will not have to park in the street. There won't be any odors, smoke, gas, dust or other pollutant, noise, glare, heat or vibration because there won't be any new structures, buildings, equipment or vehicles on the property. There is no outdoor storage of equipment, vehicles or other materials on the property. There will not be a traffic safety hazard or substantial increase in the level of traffic in the area. The business is a part time venture that operates a few days per week. There will only be one client at a time at the property with a maximum of three to five clients per day. The clients' cars will be parked in her driveway. She stated that there won't be any excessive demand on municipal services because, again, the business is a part time venture and there simply won't be enough people to create a demand on water and sewer. There won't be an increase in storm water runoff onto adjacent properties or streets because there will no new structures or changes to the existing building that would create more storm water runoff. Also nothing will be done to the landscape to create an increase in storm water runoff.

Mr. Jousse stated he was trying to understand why the variance is required because he was very familiar with that particular street and there is ample parking on both sides of the street up and down at least until you get to the 200s on Dennett Street. Below 200, there is no parking, but above 200 there is ample parking on both sides. Mr. Feldman explained it wasn't a variance for parking. It's a variance to allow any patrons who are going there and parking in her parking lot to back onto the street, which is not allowed under the Ordinance. If they choose to park on the street, which is allowed in that neighborhood, that is fine. But if they choose to park in the driveway, as part of her business venture, then they are not allowed to back onto the street.

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

Chairman Witham asked those coming forward to speak in opposition, instead of reiterating the same points that everyone is making, to indicate they agreed with the first speaker.

Ms. Patricia Nadeau came forward and stated she was not a resident of the neighborhood. She grew up in the neighborhood and her mother, Lorraine Gordon, for whom she was speaking, is a resident of 308 Thornton Street which abuts directly behind 618 Dennett Street. She had a letter which had been signed by 11 of the homeowners in the neighborhood that are opposed to the variance and she passed out copies to the Board as well as photos. She read their statement of opposition from the letter. She stated the five criteria. The first one, it does not benefit the neighborhood, they feel it would increase traffic and decrease the value of their properties and

they don't feel it would be a hardship because there must be other locations zoned for this type of business in the City of Portsmouth. The question that some of the residents had was whether or not this variance would be a continuation of this property for people as well as, if they sold the house, would it be continued on to the next homeowner as well. They wanted to make sure the Board was aware that this is a school district and that on Dennett Street, the only side of the street that has the sidewalk is the side of this residence and the children do walk to and from school and use that side of the sidewalk. There is no place for them to walk on the opposite side of the street. They felt it is an adult business and again, felt there was another area in Portsmouth where it could be located. This has always been a residential area and the residents of Thornton Street and Dennett Street would like to keep it a residential area and that is what they were requesting.

Ms. Eaton asked what made this an adult business. Ms. Nadeau answered that massage therapy, more than likely as a former hairdresser, they usually do massage therapy or polarity therapy on adults, not children.

Mr. Randy Briolat of 260 Thornton Street came forward and stated that a couple of years ago there was a business that wanted to go in around the corner and he knew it was denied so that the neighborhood could be kept as a neighborhood as opposed to having business in there. He stated he would hate to see this open up a can of worms so that this comes in and then something else and something else.

Mr. LeBlanc asked where was Thornton Street in relation to this building. Mr. Brawlett indicated Thornton was right behind Dennett. His father-in-law and Ms. Gordon are direct abutters. Their back yards abut the property. Mr. LeBlanc stated Thornton Street is parallel to Dennett Street.

Mr. Jousse requested that the difference between a variance and a special exception be explained to the audience. Mr. Feldman explained that a special exception was a use that is allowed, but may have or could have impacts associated with it such as additional noise, traffic, odors, if there are any kind of chemicals or other materials that are used that need to be looked at. So the Board's criteria for reviewing a special exception is different than a variance. A variance is varying any standards from the Zoning Ordinance. This would not be varying the standards for the use, but weighing the impacts of the use on the neighborhood versus varying the standards of the neighborhood. Mr. Jousse added that a variance is forever and special exception expires when the present homeowner leaves. Mr. Feldman stated that actually both would expire. If a variance was granted and nothing was done about it, it would expire within one year. A special exception would be the same, that if that applicant left after it was granted and not utilized within 8 months it would go away.

Mr. Briolat asked regarding that statement, if they left, would that special exception still stay? For example, if they leave and someone else comes in and that blossoms into a 5-day a week business, 8 to 10 people a day and they don't have to come in front of the Board or ask anything? Mr. Feldman stated that if the special exception were granted and those folks were to leave the property and someone else wanted to come in and meet the same criteria as a home occupation massage therapist, polarity type person, they could continue it. Except that if no one comes in to continue that same exact use within 8 months from the time that those folks leave, then the use dissipates. It goes away. Mr. Briolat asked if anyone monitors that it's only 6 to 10 people a

week? Mr. Feldman answered that the Board wouldn't specifically monitor it, but if neighbors felt that there was something more going on and it was busier and complain, it would certainly be monitored at that point to make sure they were not going above and beyond what their approvals were granted for. And what they say on the record is what their approvals are granted for. Mr. Briolat wanted to know if the people who had these massages, since he never had one, take showers afterward and wouldn't that impact the sewer system. Mr. Feldman deferred that answer to the professional. Ms. LaSella answered there was minimal lotion or oil and actually no lotion or oil with polarity therapy. A lot of the work she does is with sports injuries.

Ms. Eaton stated the Board wasn't actually setting control over the number. She asked Mr. Feldman, if the Board granted this, it will be considered three to five clients a day? Mr. Feldman answered if that's what the applicant is telling the Board on the record, then that is what the Board would be approving. She then asked what would happen if they increased that, then it would require another exception. Mr. Feldman confirmed that the Board would get another look at it. Chairman Witham stated that when a motion was made, the Board always tries to say "as presented and advertised" because you can always fall back on what they presented and look at the record for that.

Ms. Nadeau came forward again and stated that was basically why the neighbors were present because they fear it won't be just two or three people a day. As a former hairdresser, you don't want to work part time; you want to work full time, you want to build up your clientele, you want to have a substantial business, whether it's in her home or in a rented area wherever she wanted to go. But as the homeowners in the neighborhood, they don't want to keep coming before the Board and letting it know she now has 6 or 7 people or 12 to 13 people driving in. And if someone almost hit a kid because they were walking to school, the residents want it dealt with now and that is where it's going to go, not having to have to come back.

Ms. LaSella wanted to address that statement. Her intention was actually to start at her home. It actually is a financial hardship for her because she is new to this and it's quite expensive to rent in Portsmouth or the surrounding areas. So her intention is to start at home and, if she grows, she wouldn't want to be in her house any more. She stated she would prefer not to be in her house. When her business grows, she wants to be in a professional building somewhere and possibly be working with a number of other practitioners, perhaps in a wellness center. But right now, it is very difficult for her to afford it.

Mr. McNeil came forward and stated what concerned him most was the traffic on Dennett Street. Mr. Jousse knows well how that goes up and down fairly fast. It's a school district and there are a lot of young children walking on the sidewalk and the sidewalk is on this young lady's side of the street. He would like to see this turned down, but that is up to the Board.

Ms. Eaton asked about on site parking and if they were supposed to provide for one car or two? If there is supposed to be one car there at a time, but what about the next client? Mr. Feldman said the assumption is they are serving one client at a time. They have actually three parking spaces available: one in the garage for the homeowner and then two available in the driveway. She asked if they had to provide parking for one or two cars for this and Mr. Feldman stated there isn't a standard for home occupations, per se. Mr. Jousse said he would think that most

clients would probably park parallel on the street since there is parking available right there in front of the house. Ms. LaSella stated she will specify to people to park in the driveway.

Mr. LeMay stated that the Board had talked about special exceptions and the nature of the business, but the one thing that concerned him was the backing onto Dennett Street. He hadn't heard much about that and this to him is a big deal. Chairman Witham noted to the applicant that she did discuss the issue that the cars would have to back up and there are the 5 criteria to grant a variance. In her presentation, she did touch on the criteria for the special exception. He asked her to further expand on the variance request to allow the cars to back onto the street.

Ms. LaSella stated she wasn't sure what the concern was. What could she address more specifically? Mr. LeMay clarified she went into great detail with the special exception and there is another request which is for a variance which is a different standard and has five criteria that has to be addressed in order to grant the variance. The special exception is not discretionary on the part of the Board. If she meets the requirements, it must grant the special exception. If she doesn't, it can't. It's more fact minded than anything else. With regard to the variance, the Board has to find that these five criteria are met, that this won't be contrary to public interest; that it's in the spirit of the ordinance; that it will do substantial justice; that it won't diminish the values of the surrounding properties; and that there is unnecessary hardship. In other words, there has to be some really good reason that people have to back out onto the street, especially with a street that is that popular. She wasn't sure what he was asking in terms of there has to be a special reason why they have to back out. She supposed they could back in and then drive out. If she specified that to clients would that remedy the situation? Mr. LeMay indicated he wasn't sure. She stated she never had any problems backing out of her driveway. Mr. LeMay stated he knew what the criteria were, but he was confused about the requirement that they, since there is parking on either side of the street, then why are they parking in the garage or driveway and requiring them to back out into the street. Why isn't it just stated there will be not parking in the driveway or garage and you must use the public parking or keep going. Ms. LaSella stated she now understood. Mr. LeMay then said then the variance wouldn't be needed.

Chairman Witham stated that the applicant uses her house a certain way since they have lived there and obviously everyone who is a resident on Dennett Street can just back out onto the street, but once you go into business where the zoning is written, you cannot run a business where the clients come to you and they have to back out onto the street. That's how the zoning is written for a business. So to grant that variance to allow the clients to back up, you have to show some kind of hardship and that's where the criteria come in. Ms. LaSella asked can they park on the street? She was unclear if they were supposed to park in the driveway. Mr. Feldman stated there was on street parking allowed in that area of Dennett Street. However, you are also supposed to provide parking on your property for your use. As it says in the Ordinance, "except for one-family and two-family dwellings, all off street parking area shall be designed so that...vehicles can leave the parking area without backing into or from a public way." Mr. LeMay confirmed that "into or from" means you can't back into a driveway. Mr. Feldman confirmed this to be correct. Ms. LaSella asked they could only back out? Mr. Feldman said you can't back out of it either. Mr. Jousse clarified not as a business.

Chairman Witham stated she couldn't ask the clients not to park in the driveway and solve it because the zoning requires you to provide one parking spot for your business and that one

parking spot needs to be able to drive head out. Again, if you could address the criteria of why the Board should say it's OK for that, they can move forward and the Board can grant the variance if they agree. Ms. LaSella stated that the volume is so minimal that when a client is backing out, there will only be one car backing out at a time. She personally had never had a problem backing out the driveway. She hadn't found it to be dangerous or it has never stressed her out to back out of the driveway. She also felt it would be better for them to park in the driveway so as to free up any parking on the street, although there is always ample parking on the street, but she felt it would be more considerate to park in the driveway in case anyone wanted to use the street parking.

Ms. LaSella indicated she had a further question. She was wondering about there being commercial ventures in Dennett Street or in the neighborhood, because she was pretty sure the person behind her has a daycare center which has substantially more traffic than she would ever see in a month. The owner has probably more in a day than she does. She was confused about the opposition in terms of their being businesses because she was fairly sure that was a business in the neighborhood. Chairman Witham stated that any business in the neighborhood either received a variance or it was grandfathered and pre-existed zoning. But he was certain they went through the proper channels. The applicant wasn't being singled out. Ms. LaSella stated she wanted to address the concern of bringing in commercial ventures into the neighborhood that there already are people who are running businesses out of their homes and who are creating traffic, etc. Mr. Jousse indicated there was a big difference between a business and a home occupancy. If it were a business there would be 100 people here talking the applicant down.

With no one else rising, the public hearing was closed. Chairman Witham noted that the Board has two letters in opposition, one from Robert and Jane Shouse at 555 Dennett Street and one from Mr. Randall Leach at 358 Thornton Street.

DECISION OF THE BOARD

Mr. LeBlanc moved the petition be denied. Mr. Grasso seconded for discussion.

Mr. LeBlanc stated he would grant the special exception and deny the variance and he supposed he should take those as two. He withdrew his motion and Mr. Grasso withdrew his second. Mr. LeBlanc then moved to grant the special exception. Mr. Grasso seconded for discussion.

Ms. LeBlanc stated he believed all the criteria had been met for the special exception and as a result, he believed it could be granted.

Mr. Grasso concurred with Mr. LeBlanc and had nothing to add.

Mr. LeMay asked if it was possible to grant this first without having a variance in place for the other? Chairman Witham stated she could get her special exception and make her driveway U-shaped. Ms. Eaton stated she could pave her front yard and be able to turn around in her front yard.

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

Mr. LeBlanc then made a motion to deny the variance, which was seconded by Ms. Eaton.

Mr. LeBlanc stated that the Ordinance was set up to protect the health and welfare of the public and to have clients coming out of a business and then backing out, or backing into, either way, a public street where there is a fair amount of traffic is not to the benefit to the public as a whole. And for that main reason he moved that this variance be denied.

Ms. Eaton agreed with Mr. LeBlanc. She felt the special exception was appropriate, it's an allowed use, but she felt granting a variance for backing out from a client's coming and going perspective is a safety hazard.

Mr. LeMay went on to elaborate a bit. He thought there was a huge difference between a resident coming out of their own building where they are very familiar with neighborhood and environment and people that come into a place on a business basis – and he did think there was some justification for the neighbors feeling nervous about that and that was one of the reasons the criteria is in place in that there can be problems.

Mr. Witham stated he would not be supporting the motion. One of the letters in opposition noted that when they were working to get a 4-way stop sign, they were given a number of 2,500 a day as a vehicle count going up and down the street. He thought the street was long enough, it has a lot of residences and he didn't think it will be the straw that broke the camel's back. He thought the street can handle three to five clients a day, not every day. He imagined that with 99% of the homes Portsmouth, you back out of the driveway. There will be very few that actually you can pull in then pull head out. But if the Zoning Ordinance is going as far as to allow home businesses, if you meet a special exception and then the Board takes a position that you can have it as long as no one backs out, then why allow it because you eliminate 99% of the opportunity. If this was some kind of a business with sales, although sales probably isn't allowed, you would get 20 to 30 visits a day, he would be thinking differently. But with three to five visits per day and not every day, he thinks that's reasonable and if the Board is going to say yes you can have a home business and then say no you can't because you back out, it's a Catch 22 and he felt it went against the Zoning Ordinances to promote home occupation businesses. For those reasons he would not support the motion.

Mr. Jousse stated he was in Chairman Witham's corner and for one thing the whole of Dennett Street is a 20 MPH zone. He does 20 MPH and traffic stacks up behind him. When school's in session then there is the middle section of Dennett Street and real close to there knocks down to 15 MPH. Either way, if traffic is moving at the posted speed limit, it shouldn't be any problem for anybody either backing into the driveway or backing out of the driveway. It's one of the few streets in Portsmouth where 20 MPH is the speed limit.

Mr. LeMay stated there definitely was a conflict here. Why is it not possible to run this business in that area without having a client back out of a driveway? In other words, the Board granted the special exception to operate a business and it's denying the right to back out of the driveway. One doesn't seem to prevent the other, from what he had seen. In other words, denying the variance does not prevent the home business from operating, because if it did, the lack of the variance would have prevented the special exception from passing. Chairman Witham stated it

did because to have the business, she has to have one parking spot. The special exception written that she needs to provide one parking spot, but the special exception doesn't define how you get in and out of it, it's the variance that does. Mr. LeMay suggested perhaps the variance, it's not on the table here, could be not to require a parking spot. Mr. LeBlanc stated the ordinance is written that a home occupation cannot allow vehicles to back into or out of parking spots. He thought that there are more savvy people that have written that and they have their reasons for it – people that are familiar with traffic patterns and such – and as a result, for the Board to go change that would be contrary to the public interest and the public health. Chairman Witham stated he wasn't sure the special exception says you can't back out. It talks about traffic and safety hazards, etc.

Mr. Feldman stated the Zoning Ordinance says you can't back out. Mr. LeBlanc stated the Board was dealing with the variance in the case and as a result ...Chairman Witham interrupted and stated Ms. LeMay was trying to bridge that gap. Mr. LeBlanc stood by his position that it would be wrong to allow customers to back out of a business, because once it was allowed here, someone in his neighborhood might decide they wanted to do that, although the Board doesn't do precedents. Ms. Eaton mentioned that's why it's a variance. She has a one-lane road where you can have a home occupation and you can meet all the special criteria, but as soon as you start backing out into the street and you're not one of the neighbors that live there, it's a huge impact to the children in the neighborhood and the safety of the street. There is a reason for the variance and other people have thought about in other areas. Chairman Witham agreed that there was an impact however you want to define it. Everybody will have their own opinion. His position was that the impact would be minimal and someone else may feel it's huge and that's how it will go.

The motion to deny the variance as presented and advertised was passed by a vote of 4 to 3 with Messrs. Durbin, Jousse and Chairman Witham voting against the motion.

Chairman Witham advised the applicant she had a special exception and suggested she talk with Mr. Feldman about some options, but he didn't think there were many unless she could miraculously get your driveway reconfigured to do it.

III. ADJOURNMENT

It was moved, seconded and passed by unanimous voice vote to recess until December 21, 2010 at 7:00. The meeting ended at 9:25 p.m.

Respectfully submitted,

Patty Coughlin, Acting Secretary

These minutes were approved at the Board of Adjustment meeting on February 15, 2011.