MINUTES OF THE BOARD OF ADJUSTMENT MEETING
PORTSMOUTH, NEW HAMPSHIRE

MUNICIPAL COMPLEX, 1 JUNKINS AVENUE

EILEEN DONDERO FOLEY COUNCIL CHAMBERS

7:00 p.m. **June 21, 2011**

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

EXCUSED: None

Due to the anticipated late arrival of Chairman Witham, Vice-Chairman Parrott opened the meeting at 7:00 p.m.

II. OLD BUSINESS

Due to the anticipated late arrival of Mr. Durbin, Ms. Rousseau assumed a voting seat for the next five petitions.

A) Request for a One-Year Extension of Variances granted July 27, 2010 for property located at 190 Newcastle Avenue.

Mr. Parrott read into record the letter from the owner of the property requesting the extension.

Mr. Grasso made a motion to grant the one-year extension of the variances, which was seconded by Mr. LeMay.

The motion to grant a one-year extension of the variances through July 26, 2012 was passed by a unanimous vote of 6 to 0.

III. PLANNING DEPARTMENT REPORTS

No reports were presented.

IV. PUBLIC HEARINGS

1) Case # 6-1
Petitioner: Karen L. Staskus
Property: 345 Leslie Drive Assessor Plan 209, Lot 77

Zoning district: Single Residence B
Description: To replace existing porch and stairs with a 4' x 10' porch/stairs structure.
Requests: Variance from Section 10.321 to allow the expansion of a nonconforming structure.
Variance from Section 10.521 to allow building coverage of 29.2%± where 20% is the maximum coverage allowed.

Mr. Parrott noted that 29.2%± building coverage was advertised and that had since been corrected by the Planning Department to 22.4%.

SPEAKING IN FAVOR OF THE PETITION

Ms. Karen Staskus introduced herself as the owner of 345 Leslie Drive. She stated that her current steps were concrete with brick and mortar overlay and referred to the pictures she submitted. She stated that the bricks were broken, the mortar was cracked and the steps were unsafe. An additional issue was that the landing was only 4'x 4' so that when you opened the storm door, whoever was on the steps had to step backwards to have the door open and she felt it was very dangerous. She stated that she would like to have a porch and stairs. Because the stairs are already near the setback, she did not want to go out any further but would make it wider, building something that would be 4' x 10'.

Ms. Sarah Gallant stated that she was the owner of 376 Leslie Drive, an abutting property, and was in favor of granting the variances. She stated that many of the property owners on Leslie Drive hade the same circumstances and that she has seen some of the homes replace the stairs and it has made a huge difference to the functionality of the front entrance and to the overall property. She seconded the need for the safety of visitors coming in through the main entrance. The stairs were very small and she supported their replacement.

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

Mr. Jousse stated that the key word was safety. From looking at the pictures and seeing the steps, in his opinion they were a safety hazard. He stated that granting the variances would not be contrary to the public interest and he felt it was observing the spirit of the Ordinance. He added that substantial justice would be done by granting this variance, nothing had been presented with regard to the value of the surrounding properties, and he believed that denying the variance would present an unnecessary hardship on the homeowner.

Mr. LeMay stated that the critical dimension was the distance from the street, which was not changing. The steps were being made a little wider, which was safer and more functional and in keeping with modern construction.

The motion to grant the variances as presented and advertised, with the building coverage corrected to 22.4%, was passed by a unanimous voice vote of 6 to 0.

Case # 6-2

Petitioner: Richard P. Fecteau
Property: 120 Spaulding Turnpike Assessor Plan 236, Lot 33
Zoning district: Single Residence B
Description: To allow a tent to remain on the site for 38 days.
Request: Special Exception under Section 10.440, Use #18.22 to allow a 20' x 40' tent to remain on the site for a period of 38 days following the date of installation, where 30 days is the maximum period allowed for a temporary structure.

SPEAKING IN FAVOR OF THE PETITION

Ms. Jen Fecteau introduced herself as the General Manager of Port City Nissan. She stated that they have conducted tent events twice a year through their manufacturer and the event had been extended this time because of the disaster in Japan. The manufacturer wasn't sure of the availability of inventory. Ms. Fecteau requested that the tent be allowed to remain for eight (8) extra days to match with the sale and promotions. Referring to a map, she indicated that the placement of the tent didn't interfere with the setbacks.

In response to questions from Mr. Jousse, Ms. Fecteau stated that she currently had a 30-day permit which expired on June 27th and which she would like to extend to July 5th in order to coincide with the tent event promotion. She also stated that she already had approvals from the tent company and the fire department, if the extension were granted.

In response to questions from Ms. Rousseau, Ms. Fecteau stated that the tent sale usually ran the month of May, but the manufacturer changed the dates and extended it because there was a lack of inventory. After the damage was assessed in Japan, the manufacturer was able to release inventory for the sale.

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 Ms. Eaton.

Ms. Rousseau stated that this was a simple request which she did not see as being in violation of any of the special exception criteria. The petition would not create a hazard to the public or adjacent properties. She stated that there would be no detriment to property values and the extension would not create traffic or safety hazards. Ms. Rousseau noted that there would be no increase in municipal services or storm water runoff as a result of the extension. She also felt that the extension would help business owners in Portsmouth.

Ms. Eaton stated that unforeseen circumstances in Japan delayed the inventory that the tent was intended to showcase and the request was reasonable in order to move the dates of the tent to coincide with the dates of the event.

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

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3) Case # 6-3
Petitioner: Apostolic Church of Jesus Christ
Property: 500 Banfield Road Assessor Plan 265, Lot 2C
Zoning district: Rural Residential
Description: To replace an existing 16 s.f. free-standing sign with a 24 s.f. free-standing sign.
Requests: Variance from Section 10.321 to allow the expansion of a nonconforming structure.
Variance from Section 10.1241 to allow a free-standing sign in a district where free-standing signs are not allowed.

SPEAKING IN FAVOR OF THE PETITION

Mr. John Bell introduced himself as pastor of the church at 500 Banfield Road. He stated that the existing sign had been at this location for approximately 26 years and the wood was starting to rot. The sign needed to be re-fabricated or replaced. He stated that they had hired a sign contractor/graphic designer to come up with a sign, pictures of which he had provided, that he believes would be more aesthetically pleasing to the community and further demonstrate the message and vision of the church and church logo. Reverend Bell further stated that the property across the street was zoned Industrial and a similar sign there would not require a variance. He stated that the church had a good record with the community and they were not trying to be obtrusive. They just felt it was standard to have a sign in front of the church to let people know who they were.

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 Ms. Rousseau.

Ms. Grasso stated that the application in front of them was to replace a sign in need of repair with a more modern sign identifying the church. The church was located in a residential area where signs like this were not allowed. Mr. Grasso stated that he believed it was in the public interest to identify the church. There were businesses across the street that were zoned differently where, as the applicant had stated, a 24 sq. ft. sign like this wouldn't need to come before the Board. He stated that granting the variance would be in the spirit of the Ordinance. This was a residential area, but this sign had been in place for almost 30 years without creating a hardship. The variance would create substantial justice as it would help identify the church and modernize it with the current logo. Mr. Grasso stated that the value of surrounding properties would not be diminished and the hardship was that the church was in a residential area where signs were not allowed.

Ms. Rousseau stated that she felt it was reasonable for this sign to be replaced where it already existed. She stated that the hardship was that they couldn't have what they needed when it was a reasonable request.

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

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4) Case # 6-4
Petitioner: Steerpoint Properties LLC
Property: 30 Gardner Street Assessor Plan 103, Lot 43
Zoning district: General Residence B
Description: To allow four dwelling units with less than the required lot area per unit and parking spaces with less than the required dimensions
Request: Special Exception under Section 10.440, Use #1.52 to allow the conversion of a building to 4 dwelling units with less than the required minimum lot area per dwelling unit.
Variance from Section 10.812.13 to allow 2,395.8± s.f. of lot area per dwelling unit where 3,000 s.f. per dwelling unit is required.
Variance from Section 10.1114.21 to allow the specified parking spaces to be less than the required minimum dimensions.

SPEAKING IN FAVOR OF THE PETITION

It was noted that Mr. Jousse stepped down for this petition.

Vice-Chairman Parrott informed the petitioner that this was a seven member Board and, with Mr. Jousse recusing himself and Chairman Witham not yet in attendance, they were down to five members. Considering this number of sitting members, Mr. Parrott offered the petitioner the opportunity to go forward with his petition or to postpone until next month when more Board members might be available. Mr. Parrott added that, in addition to postponement, the case could also be heard out of order.

Mr. Guy Marshall introduced himself as living at 27 Gardner, but he owned the property involved which was across the street at 30 Gardner Street.

Mr. Parrott clarified for the petitioner that he would need a minimum of four (4) votes to carry the petition and that the Board was currently down to five (5). He reiterated that the petitioner could postpone if that made a difference.

Mr. Marshall stated that he chose to go forward. He stated that he and his wife bought the property across the street in 1988 and it was sold to them as a four unit building. In addition, he stated, the tax card said it was a four unit building. There were four tenants and four separate heating, electrical and hot water systems. Mr. Marshall stated that they had decided to sell the building and it was scheduled to close. The new buyer was planning major renovations and, during exploration, it was discovered that the previous owner had never gotten approval for the fourth unit. He stated that the sale had now fallen through, which left him and his wife in the uncomfortable circumstance of trying to appeal for the fourth unit. Mr. Marshall stated that he had since looked into the history of the building, which he detailed for the Board. This included a previous appearance before the Board in 1979 where his petition was denied. He stated that there had been another appearance in 1999 when the Board had determined that the Grey Rocks ruling governing their previous decision had not changed and, he stated, declined to accept the owner's proposal. Mr. Marshall also described the impact of a suit brought by the previous owner against the City of Portsmouth and the court's ruling in the Simplex case. He stated that the previous owner was to go back to the Board but had failed to do so, which left them in the position of having to appeal to the Board to keep the fourth unit. He stated that not keeping the unit would greatly diminish the value of both the property and the surrounding area. When he asked if he should go through his package of material, Mr. Parrott stated he should present whatever he needed to present.

In response to questions from Ms. Rousseau, Mr. Marshall stated that they had been taxed on the fourth unit. He clarified that the tax card indicated in 1999 that there was an issue with the fourth unit. He added that, from 2001 on, when the Gray Rocks ruling was overturned, it was not on the tax card and had been taxed with no special notation. Mr. Marshall stated that the tax card showed the property as a four unit building with four separate systems, adding that when they purchased it, the property there were four tenants, leases, damage deposits and rents and there was no reason for them to question that it was a four unit property. He and his wife had lived across the street for two years and there were always four tenants. Mr. Marshall stated that the building was fully rented and their purchase decision had been made on that income stream. He stated that he was at the mercy of the Board as right procedures had not been followed in the past. He suspected that, if the previous owner had gone back to the Board in 2001, none of this would be happening now. He noted that he was never approached by the Code Enforcement Officer or the former owner and did not know if the Code Enforcement Officer had conversations with the previous owner.

Mr. Marshall noted that parking was not an issue as they have seven parking spaces, although they did not totally conform to the size of legal parking spaces. He referred to photographs he had provided which showed the parking detail. In summary, he stated, they were asking for a variance to allow a unit which had existed since 1979 and to make allowances for the difference in the measurements for the parking.

Mr. LeMay stated that looking at the 1999 tax card it clearly indicated a fourth apartment shut down for zoning reasons. He asked if it was the applicant's contention that evening that he had gotten a bad deal and noted that clearly the previous owner knew what he was selling as he had been ordered to cease and desist but proceeded with the sale of the property. Mr. Marshall commented that the realtor was the previous owner's ex-wife. Mr. LeMay stated that getting into a bad business deal was not justification for a variance and that there were criteria to be met. He noted that the Board needed to review the requests and determine justification for them. Mr. Marshall stated that he had met with the Planning Department and followed their guidance when completing the application. Ms. Rousseau noted that he needed to go over the hardship criteria and his request. Mr. LeMay reiterated that there were five criteria necessary to grant the variance and standards to grant the special exception.

In response to questions from Mr. Parrott, Mr. Marshall stated that the 2002 tax card did not have a notation regarding the fourth unit being shut down, nor did the cards for 2003, 2004 and so forth. He stated that the property was clearly misrepresented to him and he was trying to stay out of litigation by applying for the variance. Mr. Marshall further stated that when he purchased the property in 2008, the current tax record indicated four units with no notation regarding the fourth unit. He stated that he had no reason to go back to the 1999 tax record, which was the last place that anything was noted regarding the fourth unit.

In response to questions from both Ms. Rousseau and Mr. Parrott, Mr. Marshall stated that there was no mention of the fourth unit on the deed or title search and clarified that the people working on his behalf missed it. When Ms. Rousseau asked whether this was really his last alternative if he wanted to sell the property, Mr. Marshall responded that he had no other options. Mr. Parrott stated that the argument then was economic. Mr. Marshall stated that there would be no change to the building.

Ms. Eaton pointed out that a variance couldn't be granted based on economic hardship. In addition, she asked why the different variance requests had different figures for the lot size. Mr. Marshall commented that the lot size was 97' x 115' and that he got that number from the City of Portsmouth. Ms. Eaton commented that she was pointing out that the 97' x 115' would be 2,788 s.f. per unit, but if the lot size were 9,743s.f. it would be a lot less and with regard to a variance, that could be significant.

Mr. William Jeffrey Bolster introduced himself as the owner of 44 Gardner Street and stated that he supported Mr. Marshall's application for a variance. He stated that he and his wife had lived in the single family house long before Mr. Marshall bought the property in contention as well as the property where he lived with his family across the street. He maintained that there had never been concerns with having four apartments there and no problems with parking or noise. He felt that the spirit of what was being requested was for the Board to grandfather something that went on long before Mr. Marshall made this real estate transaction. He stated that, as a neighbor with a single family abutting property, he did not see the situation as a problem. He felt that the Board would be creating a hardship for Mr. Marshall for no purpose.

Ms. Sandy Dika introduced herself as a realtor living at 333 Marcy St. She mentioned that one of the wonderful things about the South End neighborhood was the diversity in the types of people living in the neighborhood. She explained that historically it has been very diverse but had

become less so in the last 20 years as it has became more "gentrified". She stated that one of the things necessary to keep diversity in the neighborhood was to have diverse types of housing. She stated that it would be hard to lose a rental unit as they had very few rentals in the South End and this unit had been consistently rented for 30 years. She noted that the South End was sub-divided originally and that the lots were very small so that a little density wouldn't hurt the area.

SPEAKING IN OPPOSITION TO THE PETITION

Mr. Hugh Jenks stated that he had lived at 25 Hunking Street in the South End for the past 15 years and that his property abutted the property at 30 Gardner, from the rear of the property. He stated that one of the land use objectives was to prevent over crowding on the land which he felt was a critical element of the law clearly arising from the public interest. He stated that the requirement that each dwelling in this district be situated on 3000 s.f. of land was an expression of the spirit and intent of the law to prevent overcrowding. Mr. Jenks stated that the applicant's request from relief of the overcrowding provisions of the zoning law, as it applied to lot size and parking space, contradicted the spirit and intent of the Ordinance that everyone else in the neighborhood had to live by. Mr. Jenks alleged that the property was altered in violation of the law. Mr. Jenks then detailed what he felt was the burden of proof the applicant had to meet and outlined some of the past history with the court and what he felt were the applicable court rulings. Mr. Jenks stated that, while there were clearly some financial problems at the property there was no hardship arising from the property alone. He noted additional criteria that he felt the request did not meet. He held that the Board in the past had committed an error of law by hearing the second petition. He requested that there be a finality to the proceedings of this property before the Board and that the integrity of the zoning plan be upheld. In response to a questions from Ms. Rousseau, Mr. Jenks stated that he lived on Hunking Street and shared a property line with the applicant. He noted that there had been a few disturbances on the property but they had pre-dated the current owner.

Mr. Parrott noted that the applicant would have an opportunity to respond to any comments and that he needed to address the criteria that the Board had to consider rather than the history of the property.

Mr. Chris Forkel stated that he lived at 252 Marcy Street and was concerned about setting a precedent which any other property in the South End could leverage to ask for similar variances. He stated that, because of the attractiveness of the South End and the rents that could be generated, they were in danger of setting a precedent that would overcrowd the neighborhood.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Mr. Parrott invited Mr. Marshall to address the five criteria by which the application should be judged. Mr. Marshall indicated that he didn't feel he was prepared to address the criteria.

Mr. Parrott called last call for speakers on the petition. With no one rising, the public hearing was closed.

DECISION OF THE BOARD

Ms. Eaton commented that Fisher v. Dover was not invoked because of the Grey Rocks rule change and there was a legal technical change which allowed this to come forward. Mr. Parrott added that this was a new owner and that usually Fisher v. Dover was invoked with respect to the same owner coming back a second time.

Ms. Rousseau made a motion to grant both variances as presented and advertised, which was seconded by Mr. Grasso.

Ms. Rousseau stated that she wanted to address the hardship criteria because she didn't feel the applicant was coached with what he would need to address at the meeting. She stated that she saw special circumstances with the property and was not referring to the income situation. Clearly there were misrepresentations that could not be addressed with the variance request. She agreed with the realtor who was a neighbor that rental housing should be maintained in that neighborhood. She explained that the property was unlike others in the neighborhood because it was a three to four family rental property. She stated that the general purpose of the ordinance in looking at the lot area per dwelling units was to allow 2,395 s.f per dwelling unit where 3,000 s.f. was required. She felt this was not an extreme request and that it would allow the owner reasonable use of the property. In addition, she stated that there had not been any reports in regard to parking spaces at that property and there was sufficient space for four tenants to park in the lot. She also felt that this particular property owner did meet the hardship criteria as this property did not reflect the other properties in the area.

Ms. Rousseau stated that no evidence was presented to indicate that allowing the four units that were already there would diminish the value of surrounding properties and she didn't feel it would. She stated that granting the variance would provide substantial justice to the property owner and to allow this to move forward as it had been all along. She stated she didn't feel allowing the variance would do any harm to the neighbors. Ms. Rousseau stated that granting this variance would be in the spirit of the Ordinance, which was a reasonable amount of space for a dwelling unit and a reasonable parking area per unit. She didn't feel that the parking spaces would be a burden on the neighborhood. She stated that granting the variance would not be contrary to the public interest as this had been going on for years and the same services such as water, sewer and the fire department, would be needed. She felt that there would be no infringement on the public interest in any way. Ms. Rousseau concluded that she felt that all the criteria had been met.

Mr. Grasso stated that he seconded for discussion. He had a problem with the hardship request and the spirit of the Ordinance. He analyzed the application by looking at it as a three unit building with a request for a fourth unit. He felt that the applicant could enjoy the property as a three unit and it would be allowed, but for a fourth unit, a variance was required. Mr. Grasso stated that he could not see a hardship that would lead him to grant the variance. As for the spirit of the Ordinance, granting this variance would move the property toward nonconformity. He stated that the petition failed the two criteria and he would not support the motion.

Ms. Eaton stated that she would not support the motion for similar reasons. She said there were no special conditions on the property and adding a fourth unit where three units were the maximum allowed could diminish property values because of the over-crowding of the area on an over-crowded street with inadequate parking. She stated that this issue had already been denied by

the Board on two previous occasions and she reiterated that they could not grant a variance based on economic hardship for the applicant.

Ms. Rousseau commented that reasonable use of the property kept coming up in the criteria and stated that asking the property owner to take three rental units when previously he had four would be unreasonable. She stated that the applicant had operated out of honesty and integrity with no reason to believe, based on tax reports, that the property would be three units instead of four and to and to take one unit out of operation would be unreasonable.

Mr. Parrott stated that he would not support the motion. He stated that the standard lot area was 3,000 s.f. per dwelling unit and the request was for approximately 2,300 s.f., which was a considerable change. He reiterated that the hardship must be inherent to the land and not the personal circumstances of the applicant.

Ms. Rousseau commented that the definition of real estate was the land and everything attached to it. She stated that when looking at whether something was reasonable or not, they must consider not just the configuration of the land but the building on the land as well.

The motion to grant the variances as presented and advertised failed to pass by a vote of 1 to 4, with Ms. Eaton and Messrs. Grasso, LeMay and Parrott voting against the motion.

Mr. Parrott asked for a motion with respect to the special exception.

Ms. Eaton made a motion to deny the special exception as presented and advertised, which was seconded by Mr. LeMay. Mr. LeMay suggested that the request be denied without prejudice.

The motion to deny the special exception without prejudice was passed by a voice vote of 4 to 1, with Ms. Rousseau voting against the motion.

Chairman Witham and Mr. Durbin assumed their seats. Mr. Jousse resumed his seat and Ms. Rousseau returned to alternate status.

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5) Case # 6-5
Petitioners: Barbara Jenny & Matthew Beebe, Owners, Timothy & Christina Virgin, Applicants
Property: 54 McNabb Court Assessor Plan 112, Lot 58
Zoning district: General Residence A
Description: To replace an existing landing and stairs with a 6’ x 19’ front porch and stairs and construct a 6’ x 20’ rear addition.
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 37.9%± where 25% is the maximum coverage allowed.
Variance from Section 10.521 to allow a 0’± front yard setback where 10’ is required.

Variance from Section 10.521 to allow a 5'± left side yard setback where 20' is required.

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernie Pelech stated that he was representing the applicant. He had submitted numerous photographs of this portion of McNabb Court which, he stated, showed the four identical houses. He stated that the lots were created around the turn of the century on a unique L-shaped street with two dead ends. This 2,775 s.f. lot was located at the end of the "L" and was the smallest of the four lots as well as being the second smallest on the entire tax map. He noted that the houses built on the lots all had identical 20' x 26' footprints. Referring to the photographs, Attorney Pelech pointed out properties which had received variances and added additions or front porches. He stated that the applicants were requesting a variance to add the front porch and rear 6' x 20' addition. He noted that the most recent owners had received a variance in 2006 to place a larger addition and put a second floor on the garage, which would be connected to the rear of the building.

Attorney Pelech stated that the existing home was 5' from the left side property line and the rear addition and front porch would have the same setback. He noted that the left side was a huge open space, abutting the two back yards of properties that fronted on South Street. Attorney Pelech stated that a property survey done for the most recent owner showed that the property line was about 10 or 11 feet off the edge of the pavement. He stated that this house and the house to the right had green space that was really part of McNabb Court. The green space was used and maintained by the owners of the property. Attorney Pelech stated that the applicants were proposing the same style architecture for the front porch as the other front porches on the street. The rear addition was shown in the elevations. He stated that the existing lot coverage was 31% now and that 37.9% seemed like a lot, but he felt that the green space out front lessened the impact as did the open space to the side of the property.

Addressing the criteria, Attorney Pelech stated that he had to demonstrate that there were unique circumstances and special conditions that prevented the proper enjoyment by the owners of their property. He reiterated the small size and location of the lot and again noted the 10' x 30' area of green space in front of it. Attorney Pelech maintained that the combination of the above factors resulted in special conditions that distinguished the property from others in the area.

Attorney Pelech stated that the proposed use was a reasonable use and adjacent properties had been granted relief to do the same thing. He explained that, since there were special conditions, there was no fair and substantial relationship between the purpose of the ordinance and its application to the property. The Elwyn subdivision was created in the early 1900's when the area was subdivided and a lot of the lots were 50' x 100' or 50' by 80' with some even smaller. He stated that zoning was a problem in this area. He noted that in the agenda for this month, there were a lot of applications along the Lincoln Avenue corridor simply because garages were too close to property lines as all of the development predated the Zoning Ordinances. He stated that this resulted in situations where all of the lots were not neatly arranged and not all buildings sat neatly in the center of each lot.

Citing the tests in the Malachy Glen and Chester Rod & Gun cases, Attorney Pelech stated that granting the variance would not be contrary to the public interest. He stated that the Supreme Court had said that it was not contrary to public interest and the spirit and intent of the ordinance if a variance did not result in a substantial change in the characteristics of the neighborhood or result in a threat to public safety, health or welfare. Attorney Pelech stated that what the applicants were requesting was what their neighbors already had so that the essential characteristics of the neighborhood would not be changed. He noted that all the houses looked the same and all had been added on to, with front porches or additions.

Attorney Pelech stated that there would be no benefit to the general public in denying the request for variances while the hardship on the applicant would be considerable. He felt that because the next door property owners had been granted a variance to add a room, the Board should grant this application. He maintained that substantial justice would be done by granting the variance as the neighborhood wanted long-term residents and the previous owners had moved due to the size of the home. Attorney Pelech believed that the value of the surrounding properties would be enhanced by the granting of the variance as the house and neighborhood would be refreshed.

In response to a question from Mr. Durbin, Attorney Pelech stated that currently the lot coverage with set-backs was 31%. He cited setbacks for the differences between the lot coverage listed on page 1 versus the 32% lot coverage indicated on page 2. In response to questions from Mr. LeMay, Attorney Pelech confirmed that there was no action taken on the variance granted in 2005, although a one-year extension had been granted. Assuring the Board that they would not be back next month asking for a variance for a garage, Attorney Pelech confirmed that the garage was in reasonable condition and was not connected to the home.

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

Ms. Julie Tiebout stated that she had thought she would be unable to attend the meeting so had e-mailed a letter, which she read to the Board. She stated that she owned the property at 405 South Street which abutted this property. Her stated concerns included the possible blocking of a fire hydrant next to 54 McNabb Court, snow being dumped on her property in the winter, and the lack of a front yard setback setting a precedent for others on the street. While she had no concern about the rear addition, she felt that emergency access to her property was already limited by vehicles parked on the street in front of the fire hydrant, presenting a threat to the safety of area homes.

With no one further rising, the public hearing was closed.

DECISION OF THE BOARD

After a brief discussion on taking the variances separately, Mr. Parrott made a motion to grant approval of the rear addition, which would be the first variance to allow the expansion of a nonconforming structure, the second variance, amended to the lot coverage for the rear addition only, and the fourth variance to allow a 5’ left side yard setback where 20’ was required. Ms. Eaton seconded the motion with the clarification that the second variance would be to grant 34% building coverage for the rear addition.

Mr. Parrott stated that granting the variances would not be contrary to the public interest. He noted that the rear addition would be at the back of the property, no closer to the sideline that what existed, and only 6' in depth. He stated that granting the variances would not be contrary to the spirit of the Ordinance as the Ordinance encouraged owners to upgrade their homes and make them more useful as long as they didn't infringe on the rights of their neighbors, which would not be the case with the addition. He felt that substantial justice would be done as there was no overriding public interest to argue against granting the variances. Mr. Parrott maintained that the value of surrounding properties would not be diminished as the houses were alike and any effect would be minimal. He stated that the unnecessary hardship was that, although the house was reasonably situated on the lot, the lot was very narrow, only 40' across the front, which was a severely limiting factor.

Ms. Eaton stated that the lot coverage was an issue. It was currently about 32% on an unusual piece of property with four small lots in a grouping. She stated that it was important to add a small addition to the back and the 34% building coverage was supportable but more would be inappropriate considering the dense area.

Chairman Witham clarified that there was a motion for the rear addition and that after discussion and the vote, he would ask for a motion on the front porch. If any member was in support of the front porch as well as the rear addition, there would be an opportunity to make a motion in favor of the 0' front setback variance request, which was still on the table. It was also still on the table to grant the original request in its entirety.

The motion to grant variances to allow the expansion of a nonconforming structure, building coverage of 34% or what would be necessary to allow the proposed rear addition, and a 5' left side yard setback where 20% is required was passed by a unanimous vote of 7 to 0.

Chairman Witham asked for a motion regarding the front porch.

For discussion, Mr. LeMay made a motion to grant the variances necessary to allow the proposed front porch, which was seconded by Mr. Grasso, also for discussion.

Mr. LeMay stated that the hardship was established in the previous variance and applied to the front porch variance request. He felt the distinction was that they were requesting 0' on the front side line, as had been routinely done in this neighborhood. He stated that the situation was unique as the area was grassed-in, private and not very accessible. He felt that the argument regarding the accessibility for the fire department should be handled by the building department. He added that the other rationale and arguments put forth for the first motion should also apply to the approval for the front porch.

Mr. Grasso clarified that this motion would involve granting all four variances, with the second variance now to allow building coverage of 37.9% as advertised and the third variance to be granted to allow a 0' front yard setback where 10' is required. He noted that he would support the motion as the property was in a very secluded, on a dead-end street. He felt that other properties in the area had been allowed the same additions and approving a variance for the front porch would present no problems.

Chairman Witham stated that he would support the motion. He felt that the addition of porches to the neighborhood had added character and life. While he respected the 10' requirement, the porch was still more than 10' from the edge of pavement due to the lawns serving as buffers. He added that there were no sidewalks and the only traffic was due to people who lived there. Chairman Witham felt that no precedent was being set by allowing the 0' coverage and the proposal would not change the essential character of the neighborhood. With regard to the parking, he didn't feel the applicant should be paying the price for past owners and if there were an issue with the hydrant, the City would not allow it to go through. Chairman Witham stated that the lot coverage did seem like a large number, but considering the neighborhood and the open space to the side, it was acceptable and he felt that these additions would be the extent of what could be done to the house.

The motion to grant all four variances was passed by a voice vote of 6-1 with Mr. Jousse voting "nay."

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

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6) Case # 6-6

Petitioner: Catherine Moretti
Property: 261 Myrtle Avenue Assessor Plan 220, Lot 87
Zoning district: Single Residence B
Description: To subdivide an existing conforming lot into 5 lots, 4 of which would be nonconforming for continuous street frontage.
Request: Variance from Section 10.321 to allow four lots with a continuous street frontage of 80'± where 100' is required.

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernard W. Pelech identified himself as representing the applicant and distributed a new plan to the Board which was different from the plan in the packet. He explained that they had been able to reconfigure the lot lines so that 4 of the proposed 5 lots had the required 100' in frontage and only one remained which required a variance for 80' street frontage. He then outlined a brief history of the property. He noted that the minimum lot size for this zone was 15,000 s.f. and they were well above that on all five lots. While an engineering firm had proposed an alternative plan for six to seven lots if they wanted to build a city street with a cul-de-sac, they elected not to build a new street which the City would have to maintain. He stated that there were no wetlands on the property and all requirements were met with the exception of the 80' on lot #5 which abutted the business district. He stated the lot in question was 21,338 s.f., more than enough of a buildable envelope for a normal size home.

Attorney Pelech stated that the lot had a unique shape due to the fact that the back half was taken by the government when a high level bridge was built. He maintained that the additional special conditions making the property unique were that it was a large lot in a residential district which

had a 100' PSNH utility easement that ran along the back of the property. Attorney Pelech believed that there was a hardship and that granting the variance would not be contrary to the intent of the Ordinance nor would it be contrary to the public interest. He noted that there were very few building lots in the City of Portsmouth and even fewer that were not encumbered by wetlands or other geographical features that make them difficult to build on. He believed that allowing a sub-division of this size in this neighborhood would not affect the essential characteristics of the neighborhood nor threaten public health, safety or welfare.

Attorney Pelech stated that substantial justice would be done by granting the variance. They had had a number of scenarios presented, one of which qualified the lot as low income and one which would include 24 affordable housing units. They felt, however, that single family residences were more in keeping with the character of the neighborhood, with everyone having their own driveway off the street. Attorney Pelech stated that granting the variance would not result in diminishing the value of the surrounding properties. The lot with the 80' frontage was surrounded on two sides by the business district with I-95 in the backyard. Attorney Pelech felt that all five criteria were met for the Board to grant this one variance rather than the four originally requested and advertised. He added that the owner's sons were there to answer any questions about the property.

Mr. Jousse asked about the discrepancy between sheet #6 in the plans which he calculated to show 441' of frontage and #7 with 480' of frontage. Chairman Witham stated that a small section on Central Avenue which wrapped around the corner was probably another 40'. Attorney Pelech explained that, if the tax map was correct, there would be a total of 499' of frontage which would leave this lot with 97' of frontage. As the property had not been surveyed, the owner wanted to leave it at 80' in case there ultimately was a discrepancy between the map and the survey.

Mr. Parrott stated that he had the same concerns because note #3 on the map report indicated that no survey has been performed and that all numbers should be approximate. He wanted to know how approximate the numbers were. Attorney Pelech responded that the plan was conceptual and was taken from the tax map. He stated that he had met with the Planning Department, and the applicants were aware that a full surveyed plan was going to be needed before going to the Planning Board.

Mr. Parrott felt that a note like that was like opening up a barn door. He read from the site plan and further stated that when technical people talked about approximate they talked about some plus or minus percentage. He stated that he was concerned with someone trying to use the note and term "approximate" against the Board at a future date. Attorney Pelech referred to the I-95 taking plan, which he handed out to the Board. The metes and bounds survey was done by the NH DOT or their contractor when they took the Moretti property in 1969 as the high level bridge was being constructed. He felt it was an accurate survey of what was taken and what remained and stated that, if what they are proposing somehow changed, they would come back.

Chairman Witham confirmed that the applicants were before the Board because they wanted to move forward with the plans and that they had been up-front that the property was not surveyed. They felt they could definitely accommodate 4 lots at 100', with one lot at least at 80' of frontage, which could be in the high 90's if they went according to the frontage. The applicants would come back before the Board if there were anything lower than 80' frontage so that was what should be considered. In response to questions from Ms. Eaton, Chairman Witham confirmed that

the request was for a variance for 1 lot with 80' of frontage, not the original 4 lots with 80' of frontage each. He noted that the Board could always grant less than what was advertised.

Mr. Parrott commented that he didn't see any disadvantage to having a surveyed map and asked why a surveyed map had not been submitted. Attorney Pelech stated that they had to get a variance before going to the Planning Board and the cost of a full survey would be a substantial expense to the applicant. Mr. Parrott disagreed, stating that he had seen things go to the Planning Board with the stipulation that a variance may be required. Ms. Rousseau asked why they couldn't do the 100' and where the hardship was. Attorney Pelech responded that they didn't have a full 500' of frontage to have 5 lots with 100' although if the tax map was correct, they had 499'. The last lot might have the 80' applied for or be considerably larger.

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

Ms. Lynn Rudder stated that she lived at 240 Myrtle Avenue, directly across from the property. She stated that each homeowner had put a lot of care and investment into their homes which, she felt would lose significant value if the proposal were approved. She outlined the negative aspects of their current situation including power lines, water flowing into her garage, and the noise from I-95 for which the subject property created a buffer. She commented that there had been no survey and no information provided, or discussion with, the neighborhood. She maintained that the development would take out trees and expose power lines and that the more homes that were built, the greater the exposure and negative impact. Chairman Witham asked what the impact would be on the value of her home if there were one less lot proposed and all the trees were cut which he noted the owners could do without a variance. Ms. Rudder stated she was responding to any development and 4 homes instead of 5 would probably not reduce the impact that much.

Ms. Dyan Kozikowski. of 287 Myrtle Avenue stated that she loved her neighborhood and was not in opposition to the development of the land, but the number of lots placed on the property, which she felt would require removal of most of the trees and a large amount of ledge. She was concerned that, with the trees removed, the noise would be significant and drive down property values.

Mr. Sam Jones of 217 Myrtle Avenue stated that he was opposed to the whole development of the land. He added that the neighbors had not been notified as to the plans for dividing the property or any environmental impact. He reiterated the concern of previous speakers about removal of the trees.

Mr. David Leer, of 260 Myrtle Avenue stated that his property was directly across the street from the proposed lots. His concern in granting a variance was that the property sat up high and there was water runoff. He believed there was a city pipe that ran under Myrtle Avenue that drained into a wetland. When he added that he felt abutters were entitled to see plans before any variances were granted, Chairman Witham noted that they could go to City Hall to view any plans.

Attorney Pelech stated that he hoped there was no confusion about whether or not the subdivision should be granted with this request for a variance. He stated that the property was going to be developed as the owner had the right to develop her property consistent with the Zoning

Ordinance. He outlined again alternative concepts which did not require variances and which could involve a cul-de-sac with 5 or 6 single-family residences or 12 duplexes.

Mr. Joe Moretti spoke on behalf of his mother who owned the property. He noted that the alternative concepts were on the realtor's website. He indicated that prior to developing the concepts, they had met with the City several times talking about flexible housing development and affordable housing. He stated that, at one point they had talked to the neighbors as to the impact on the property. Mr. Moretti noted that the two houses across the street either touched the highway or were just off to the left side of the highway. The sound from the highway was already there. There was a buffer that stopped at the New Franklin School so, he stated, there was a direct shot from the highway to the properties of the two abutters who had spoken. Mr. Moretti added that all of the pine trees on the property were dead from highway salt and would be coming down. He noted that, rather than putting in multi-units with a cul-de-sac, they had chosen to go with what would have the least impact on the area. He maintained that the setbacks were all met and all they were asking for was reduced frontage for one lot.

Chairman Witham stated that this was the first step of many in order for the proposed plans to go forward and the applicants would have to go before the Planning Board where the abutters could get together, if they wished, and negotiate some sort of buffer. He emphasized that there were many levels and this would not be the abutters' only opportunity to be heard.

With no one further rising, the public hearing was closed.

DECISION OF THE BOARD

Chairman Witham noted that request was for one lot with 80' frontage where 100' was required. He stated that the Board should focus on the one lot that didn't meet the requirements and not get bogged down with the other four lots which did not require a variance.

Mr. Parrott made a motion to approve the proposal as presented that evening with plan #CO-7, dated June 21, 2011. He added a stipulation that, with respect to Note 3 on the plan that the calculations should be regarded as approximate, the deviation should be no more than 3% plus or minus and, if that could not be accomplished, the variance would be moot. He stated that a 3% leeway should be enough to accomplish the objectives. Mr. LeMay seconded the motion, with the proposed stipulation.

Chairman Witham suggested that rather than tying the stipulation to 3% plus or minus, the stipulation be that the frontage on the lot in question would not be less than 80'. Mr. Parrott and Mr. LeMay agreed to the revised stipulation.

Mr. Parrott stated that granting the variance would not be contrary to the public interest. He felt that the public interest had been expressed not so much to the specific variance, but to the development of the property at all, which was beyond the purview of the Board. He stated that granting the variance would be in the spirit of the Ordinance which allowed the lawful development of the property, including subdividing it, within the guidelines provided by the City.

Mr. Parrott stated that granting the variance would do substantial justice. The property had been undeveloped for a long period of time and as desirable as it was to maintain a buffer between the existing homes and the highway, the property owners had a right to develop their property.

Mr. Parrott stated that granting the variance would not diminish the value of the surrounding properties. As no evidence was presented to the Board either way, the Board couldn't speculate and had to assume that surrounding property values would not be diminished by granting the variance. He stated that, in the hardship test, the property did have special conditions. It had a large utility easement on part of it, was right up against the highway, and was not necessarily easy to develop because of the ledge and the irregular shape. Given all the factors presented, Mr. Parrott felt the proposal was reasonable.

Mr. LeMay stated that they were looking at a 5 unit subdivision. It would be nice if it was a 4 unit that didn't need any variances, but that was not what is on the table He stated that there were other plans which didn't require a variance and would have a much more dramatic impact on the area. He felt that the abutters would have other opportunities to give their input at planning meetings and the interests of everybody were fairly well protected.

Ms. Eaton stated that she didn't see a hardship. All the plans showed that there were ways to develop the property without a variance, including 3 or 4 lots with the existing house, rather than the 5. She stated that making an assumption that the other intensified developments would be approvable without a survey or wetlands delineation was inappropriate. She didn't agree that the variance criteria necessary to grant a variance for what had been presented were met.

Ms. Rousseau agreed stating that she felt the applicant hadn't really shown a hardship and couldn't provide a survey due to affordability. She stated that, when 4 or 5 lots were developed, the cost would be an extreme burden to the health, safety and welfare for the City of Portsmouth and the City would not be able to collect taxes to cover the expenses of city services and schools. Ms. Rousseau felt it was reasonable to request that a survey be provided and that the current proposal did not meet the hardship criteria for a variance to be granted, especially since there were alternatives available.

Chairman Witham stated that he supported granting the variance and felt Mr. Parrott covered it well. There were four conforming lots that most directly abutted the neighbors. He understood the concerns about the buffer but further stated that was never a guarantee when buying into a neighborhood where there was a lot that could be subdivided. He noted that, even if the property remained one lot, all the trees could still be removed, although he felt the lots would be more valuable to the developer if a buffer were maintained. Chairman Witham stated that the variance request was for the last lot at the end of the line with a PSNH easement going through it and a business district on two sides and a highway on the other side. He felt these were special conditions and should carry some weight. He stated that, looking at the tax map, there was a range of street frontage widths for all of the lots, from the 70's to slightly over 100'. He maintained that to have four lots at 100' and one below 100' would in no way change the essential characteristics of the neighborhood but would maintain the rhythm that is there now. He felt that, even without a survey, the Board had enough information for a vote. In terms of the burden on the City of cost versus tax revenue, he stated that was not a part of the criteria for a vote on the variance.

Ms. Eaton pointed out that the lot was not developed and was being split into an extra lot. She stated that they could have a 3 or 4 lot subdivision without a variance being required. She didn't see how a variance was supportable when turning a compliant lot into a non-compliant lot.

The motion to grant the petition, with the stipulation that there be a minimum 80' of street frontage on the fifth lot, failed to pass by a vote of 2 to 4, with Ms. Eaton, Ms. Rousseau and Messrs. Jousse and Parrott voting against the motion.

Messrs. Durbin and Grasso resumed their seats. Ms. Rousseau returned to alternate status.

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7) Case # 6-7
Petitioners: Greenbrook LLC, Owner & Matthew Beebe, Applicant
Property: 66-68 South Street Assessor Plan 101, Lot 70
Zoning district: General Residence A
Description: To replace existing 26'4" x 19'4"one-car garage with two-car garage in the same footprint.
Requests: Variance from Section 10.321 to allow the reconstruction of a nonconforming structure.
Variance from Section 10.521 to allow a right side yard setback of 1'± where 10' is required.
Variance from Section 10.521 to allow a rear yard setback of 1'± where 25' is required.

SPEAKING IN FAVOR OF THE PETITION

Mr. Matthew Beebe stated that he was the owner of one of two condominiums on the site. He stated that if you looked at the existing conditions plan with the proposed 2 car garage, it was virtually the same as the petition. He didn't want to change the footprint of the building and noted that the drawings provided showed that they would essentially be recreating the existing building as it now stood. The greatest difference was that they would be taking a sub-standard accessory building and building it new so that it would have a proper concrete foundation and slab onto which a car could be pulled. Mr. Beebe noted that the floor on the part of the garage currently being used as a bay was not sufficient to support the weight of a car so you could not currently pull a car into the space. He stated that an added benefit was that they would configure the driveway in a way that would effectively create additional off street parking. You could currently get 4 cars into the driveway, but getting in and out involved a shuffle of vehicles. He commented that the owners of the unit in front typically parked both of their automobiles in the public lot. Mr. Beebe added that what he hoped to accomplish if relief were granted was to be able to pull cars into the garage bays while allowing two additional cars into the driveway, without having to knock on a neighbors door to ask them to move their car. He stated that the improved parking would take two cars out of the public parking lot.

Mr. Beebe stated that the hardship inherent in the property was that the lot was too small to meet the regulations provided by the Zoning Ordinance and the building had been constructed prior to its enactment. He stated that the problem was the location of the garage, typically built right on the lot line. He felt this would not be a precedent setting case, as the Board had heard these cases before and determined that a new, safer, code-complaint building that was easier to maintain would help the abutters as well as the homeowner. Mr. Beebe stated that the value of surrounding properties would not be diminished but should be improved. Further, he maintained, the proposed use was not contrary to the ordinance because they simply wanted to add to the enjoyment and use of the property. He noted that they would be rebuilding in the same footprint while improving the safety and aesthetics of a building where the roof was in danger of collapsing. Mr. Beebe stated that granting the variance would benefit the public interest with regard to the parking as well as replacing an older rotting structure. Finally, he stated that granting the variance would provide substantial justice. It would not harm any of the abutters but would provide a benefit to the owners in having additional space in a garage that was more aesthetically pleasing.

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

In response to a question from Chairman Witham, Mr. Beebe stated that the property directly behind his was up for sale and was currently in the process of being conveyed to a new owner. He spoke with the realtor, but did not get a reaction from either the sellers or the buyers.

Mr. Parrott made a motion to grant the petition as presented and discussed, which was seconded by Mr. Jousse, with the stipulation that a gutter system be installed and maintained on the rear side of the garage to reduce or alleviate the runoff onto the rear property. Mr. Parrott agreed to the stipulation.

Mr. Parrott stated that granting the motion would not be contrary to the public interest as the garage was in the back of the property, against the backyard of another property and a public playground so he didn't see where the public interest would be impeded. He stated that it was in the spirit of the Ordinance to allow people to replace something when its useful life was over. He stated that, in the justice test, the balance tipped in favor of the property owner. Mr. Parrott stated that granting the variance would not diminish the value of the surrounding properties and replacing the garage would be a good thing. He felt that the unnecessary hardship was that the garage was on a small lot and wouldn't negatively affect the adjacent park or the neighbors in the back so the location of the garage was reasonable. He noted that the lot was 48' at the back and there weren't a lot of choices. The garage was either replaced where it was or it probably wouldn't get replaced.

Mr. Jousse stated that he had nothing to add to the motion.

Mr. Grasso stated that he would not support the motion. He went to look at the property over the weekend and they were asking for a 1'± setback next to the chain link fence, which he felt was

more to the minus 1' side. He noted that it abutted a city playground and he would be more comfortable if it were 3-4' in and 3-4' back from the back property line instead of the 1'±. Ms. Eaton stated that there was a survey plan that showed there was a .45' setback and a .944' setback, not a foot. Mr. Grasso added that the current garage was not on a concrete foundation and if they were doing everything new, the applicant could have proposed something closer to conformity than what was proposed.

In response to a question from Mr. LeMay, Chairman Witham stated that the way it was presented was 1'± in the same footprint. The Board could grant less or they could make a stipulation of a minimum of 1', 2', or 3'.

Mr. Grasso commented that, with the location of the chain link fence, there was no way they would be able to put up the side wall without digging into city property. It was stated that when they dug for the foundation, they would have to over dig so they would be digging into city property.

Mr. Beebe asked to be able to respond and stated that when he filled out the application his assumption was that it would be better to ask for the same footprint rather than ask to move it further away. You could see on the lot that it should be somewhere on that corner in order to preserve the green space that exists. He further stated that if the Board saw fit to make a stipulation that it needed to be moved slightly off the sideline, he was okay with that. He stated that to do the foundation along the city line, they could do an offset foundation and they would not have to dig beyond the chain link fence. He further stated that you would essentially create a form right up against the edge of the fence where it was now and have a larger footing that extended beyond the inside of the wall. Finally, instead of having traditional spread footing, you would have the wall on the edge and the footing would extend further out and require a reinforcing bar to prevent the wall from tipping over. He stated that this has been done in the past in difficult areas. He stated that he didn't propose this, but if the stipulation was placed to move it a foot away from the lot line, he was okay with that.

Mr. Grasso commented that he was not redesigning the project but going by what was before the Board.

Chairman Witham stated that Mr. Grasso could vote no, propose another stipulation to the maker and the second, or move ahead with how it was presented. Mr. Parrott stated that he would welcome a second stipulation, in addition to the gutter requirement, and proposed a 2' setback on both sides with which Mr. Grasso agreed. Mr. Parrott, as the maker of the original motion, and Mr. Jousse, as second, both agreed to add the new stipulation that there be a 2' minimum setback along the right side and rear.

Chairman Witham stated that the motion was to approve the petition with two stipulations, that a gutter be installed and maintained along the rear property line and that there be a minimum 2' side setback along the right side yard and rear yard.

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

V. OTHER BUSINESS

No other business was presented.

VI. ADJOURNMENT

It was moved, seconded and passed by unanimous voice vote to adjourn the meeting at 9:50 p.m.

Respectfully submitted,

Mary E. Koepenick
Administrative Clerk