

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

**MUNICIPAL COMPLEX, 1 JUNKINS AVENUE**

**SCHOOL BOARD CONFERENCE ROOM**

**7:00 p.m.**

**January 15, 2013**

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

**EXCUSED:** Alternate Robin Rousseau

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Chairman Witham called the meeting to order at 7:00 p.m., advising that Ms. Chamberlain would be arriving shortly.

**I. NEW BUSINESS**

A) Election of Officers

It was moved, seconded and passed by voice vote of all except the nominees to re-elect David Witham to serve as Chairman and Arthur Parrott to serve as Vice-Chairman until the next election of officers.

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Miss Chamberlin arrived and assumed her seat.

**II. APPROVAL OF MINUTES**

A) December 18, 2012

It was moved, seconded and passed by unanimous voice vote to accept the Minutes as presented with a request to clarify one paragraph on page ten.

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Mr. Mulligan recused himself from Items A) and B) of Old Business. Mr. Moretti assumed a voting seat.

**III. OLD BUSINESS**

- A) Request for One-Year Extension of Variances granted February 21, 2012 for property located at 28-30 Dearborn Street.

Chairman Witham advised that they were allowed by the Ordinance to grant a one-year extension of previously approved petitions. He offered the attorney representing one of the applicants the opportunity to address the reason for the extension request.

**SPEAKING IN FAVOR OF GRANTING THE EXTENSION**

Attorney Jack McGee noted that the letter requesting the extension had come from both him and the attorney representing the other applicant. He stated that finances had been a consideration but they were recently freed up and they expected to accomplish significant work in the next year. When Ms. Chamberlain asked if there had been any outstanding complaints from neighbors about access, he responded that he was unaware of any complaints. He believed the neighbors were anxious to see the work done, noting that the wall and sewer projects would be significant. They had obtained the permission to remove two big trees.

**DECISION OF THE BOARD**

Mr. Parrott made a motion to grant a one-year extension of the variances granted February 21, 2012. Ms. Chamberlain seconded the motion, noting that she recalled a number of people interested in the work being accomplished. As long as nothing was changed, she felt they should receive the extension and proceed as soon as possible.

The motion to grant a one-year extension of the variances through February 21, 2014 was passed by a unanimous vote of 7 to 0.

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- B) Case # 12-6
  - Petitioner: Justin D. Setchell
  - Property: Fairview Avenue off Maplewood Avenue
  - Assessor Plan 220, Lot 66
  - Zoning District: Single Residence B
  - Description: Construct a new single-family home.
  - Requests:
    1. A dimensional Variance from Section 10.521 to allow a rear yard of 10'± where 30' is the minimum required.
    2. A dimensional Variance from Section 10.521 to allow a lot area of 6,000 ± square feet where 15,000 square feet is the minimum required.
    3. A dimensional Variance from Section 10.521 to allow a lot depth of 60'± where 100' is the minimum required. *(This petition was postponed from the December 18, 2012 meeting)*

**SPEAKING IN FAVOR OF THE PETITION**

Attorney Francis X. Quinn, Jr. advised that he was representing Mr. Justin Setchell in support of the petition. He stated, in response to the concerns of the Board and some abutters expressed in

October when they were denied 5 variances, they had reduced the size of the house and changed from a two-car to a single-car garage. The number of variances was reduced to the three they were requesting that evening. He pointed out on the displayed plan features of the proposed house. Addressing concerns, they had put the single family residence in the best position using Fairview as the orientation for the house, leaving the driveway where it was, reducing the garage and keeping consistent with the flow of properties on Fairview. Attorney Quinn stated that, in response to other concerns expressed at the last meeting, Mr. Setchell wanted to assure them that the proposed would be done tastefully with no added noise or traffic, or need for additional police or fire services at the property.

Mr. Henry Boyd of Millennium Engineering stated, at the previous meeting, it was felt that the structure was too big and while the home was the same, they had reduced the garage to 264 s.f. They decided on the proposed orientation of the garage as it lined up with the existing driveway and improved the setbacks. They had promised one of the abutters to explore a driveway on the other end, but thought that Public Works might feel it more proper and safer to have the driveway further from Maplewood. While they had not talked with DPW, they had no reservation about doing so.

Mr. Boyd described how the drainage flowed to basically a retention pond on the property. He stated that the owner had authorized them to look at methods to mitigate any possible adverse effect on neighbors. He explained the reasons why they could not rotate the house so that it appeared to front on Maplewood and, using the exhibits, outlined other abutter concerns that they had considered. They felt that the abutters' view of the house would not be a concern and the house would be attractive. He stated that they were keeping the house from Maplewood Avenue and setting it back for the safety reasons as well as the character and the orientation to Maplewood. He noted that placing the structure as they were doubled the setback. He noted that the dimensions shown on the plan were to the overhang so that the 10' from the abutter was actually 11' to the body of the structure. With regard to the rear setback, he outlined the problems in trying to move the house forward. At 22' from the street, the house would align with the run of the structures up Fairview Avenue. As a final comment, he stated that they would attempt to capture in some sort of a rain garden the runoff from the front of the house and the driveway to ensure that they would not be running anything off-site.

Attorney Quinn stated that this was a legal nonconforming lot of record. It was small but not overly so compared to the abutting lots in the neighborhood so that a 1700 s.f. house would not be conflicting with the character of the neighborhood. Granting the variances would be within the public interest and the spirit of the Ordinance. He stated that when you compared the public benefit against that of the applicant, the balance tipped to the owner. While there was a smaller house that could be built, this was a reasonably sized house given the lot size. Regarding any diminution in the value of surrounding properties, they would be working with the abutters regarding drainage. They would be taking a dilapidated shed and overgrown lot and building a nice structure so that values should, if anything, increase. He referred to his memo for the hardship, noting that this was a 6,000 s.f. lot that had been of record for many years and, but for a variance, the owner would not be able to build.

Mr. Rheume noted that the south side elevation #2 appeared to show a dormer over the garage while elevation #3 did not and he asked which was correct. Attorney Quinn stated there would not be a dormer over the garage. Mr. Rheume pointed out a 60' dimension on the first floor plan

that might have been associated with the previously proposed building. The second floor plan showed a 48' dimension. He asked if that was the correct dimension for the house including the garage and Attorney confirmed it was. Mr. Parrott questioned the deck shown on page two which didn't seem to be shown on the large plan. Attorney Quinn stated that there would be no deck. Mr. Parrott questioned the inconsistency and Attorney Quinn reiterated that there would not be a deck on the design being proposed. He would have the rendering of the deck removed if it was inconsistent.

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

Mr. Peter Bresciano stated that he lived at 101 O'Leary Place which was just up the street. He noted that there were three homes in the cul de sac over 2,000 s.f. and he felt that putting a house on that lot that was almost as big as his was "crazy." He briefly outlined some history stating that the lot was not taxed as a building lot but just a lot. His other issues were drainage and runoff and a 6,000 s.f. lot where 15,000 s.f. was required. Ms. Christine Ruhnke of 898 Maplewood outlined her concerns, which included density, parking and traffic. The home would not fit the character of the neighborhood and the value of surrounding properties would be diminished. The home should face Maplewood. She claimed that drainage flowed down Fairview and this proposal would exacerbate the issue. She believed the home had one off-street parking space and there was no place to park during a ban. She believed another variance was needed as she thought the plan indicated a 36' x 26' house and a 12' x 24' garage for 1224 s.f..

Ms. Tara Shaw stated that she lived at 934 Maplewood Avenue and also represented her mother who owned 134 Fairview which she pointed. She agreed with the previous abutters' concerns and asked for certain conditions if the Board was inclined to approve the application. These included that the design would be as presented with any changes made orally at the meeting, that they use Gray Builders or an equivalently qualified builder, that they reorient home, remove the deck and provide drainage remediation. Ms. Elizabeth Murphy of 900 Maplewood Avenue stated that she supported the previous comments of the abutters.

Attorney Bernard Pelech stated that he was representing the owners of 860 Maplewood Avenue, which he indicated on the plan. Their concern was a two story structure with a 10' rear yard setback. He maintained that light, air and property values would be affected and, although it would require a front yard variance, the home could be moved closer to Fairview and extend the back yard. He read into record a letter, which he distributed, from Mr. Jim Mills of Remax which outlined the problems the Johnsons had with water runoff in the past. Attorney Pelech stated that granting the variances would create a hardship for the abutting property and explained why he felt each of the criteria necessary to grant a variance were not met.

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

Mr. Henry Boyd addressed some of the comments. The lot did not have a Maplewood Avenue address. The Johnson lot drained onto this property. They couldn't turn the house without additional variances. The house was 1200 s.f., not 1224 s.f.. He added that it the true definition of the hardship was that the lot was what it was, adding that the coverage requirement was met. He reiterated that he had been authorized to work to help mitigate what was already happening with the drainage and ensure that what was built wouldn't adversely affect it.

Mr. LeMay asked about the 10' area in the rear of the house, what was the approximate distance between the first floor and the ground level. Mr. Boyd stated that was one of the disadvantages of this plan which was not having a vertical study because he honestly didn't know what the height of the hole. Once they had a topographic map and worked with the designer, he could better answer that question. What they would attempt to do was fill the hole and grade it so that the water wouldn't flow back over to the abutter as the water currently was coming on to this property. Mr. LeMay stated that they were representing that they only needed a 10' distance to the house so somehow they were going to come out of the sliders onto no deck or something. Mr. Boyd felt badly that the house plans didn't proximately represent what was proposed, and they should. The deck shouldn't be shown as Mr. Parrott pointed out. Mr. LeMay stated that they were still going to need a landing or steps and Mr. Boyd agreed and they had to comply with the Zoning Ordinance or they would have to access some other way.

Mr. Rheume asked him to talk about the ability to park in the driveway area and the length there as there was a perception and concern of one of the abutters that there was only room for a single vehicle. Also, if the dwelling were moved closer to Fairview, how far could they go without having insufficient room to park an extra vehicle there. Mr. Boyd stated that they had the ability to park a car in the garage. There was an additional 24' to the street and another 5' of driveway that's in the right-of-way. With the width of that driveway, if they paved only the portion from the driveway out to the street would only allow one car. They could have a pervious paved spot that could accommodate two or three more.

Attorney Jack McGee stated that he and his wife lived at 303 O'Leary Place and was not speaking to, for or against but had grown up in the neighborhood and there was a problem with drainage. He felt that, before the Board went ahead on granting a variance, they needed to find out about the drainage. He felt a drainage study should have already been done. Additionally, he wasn't certain the house and its height fit the "flavor" of the neighborhood, a facing on Maplewood Avenue would create a serious safety concern, and, if this were passed, he would like to see a buffer of arbor vitae maintained.

Attorney Quinn stated that his understanding was that the chief complaint was drainage, particularly as it related to diminution in values. He asked the Board to be given leave to conduct the mitigation testing, the soil testing, by Mr. Boyd's firm so they could satisfy the concerns of the neighbors and assure that putting the house in the proposed position would be a "win/win." He asked the Board to consider a motion to continue to allow them to conduct the soil mitigation testing and resubmit based on that testing and based on further conversations with Mr. Pelech and other abutters.

## **DECISION OF THE BOARD**

Chairman Witham stated that Attorney Quinn had requested that the hearing be continued so they could provide the drainage study and whatever remedial plans they would have for that. It would give them an opportunity to also clear up the floor plans elevations to reflect what has been presented verbally that evening and corrected from the submitted packet. It was the Board's option to continue this or not. He was open to the idea of continuing. He didn't have an issue with many of the items discussed, didn't feel property values would be diminished or that the house was too large as it met the coverage requirement. He didn't any traffic and safety issues. His concern was the drainage and he would like to see some concrete plans and information.

Ms. Chamberlin made a motion to continue, which was seconded by Mr. Rheume. Ms. Chamberlin stated that drainage was a concern and they needed specifics on whether something could be done and what could be done. She was aware that this was the second time that abutters had to come out for a meeting and it was a commitment of their time but it did seem that with a little bit more information and discussion, there might be an agreement, or something close.

Mr. Rheume agreed stating that the petitioner had made a valid request to more thoroughly address some of the major issues that had been discussed. A continuance would also give the petitioner an opportunity to rework the plans. He was a little disappointed in their quality and discrepancies, noting the inclusion of elements which they had represented would not be a part of the structure. He felt they could also address some of the requested stipulations such as plantings along Maplewood Avenue to alleviate the concerns about the orientation to Fairview Avenue.

Mr. LeMay wanted to emphasize that it seemed to him, at least from that evening, the sort of thing that, if the Board approved it, it would be back before them for a variance for something in the back yard, such as a deck which would reduce the setback further. He didn't want to see that happen here. Elevations and topography all had to be worked and he remained concerned about the egress at the back.

Chairman Witham stated that, if this were continued, he would expect to see a topography plan and some type of drainage analysis, maybe a landscaping plan. They knew what they need to do to help their case if the motion were approved. He called for a vote noting that, if it were not approved, they would continue that evening.

The motion to continue hearing the petition at the meeting of the Board of Adjustment on February 19, 2013 was passed by a vote of 5 to 2, with Messrs. Durbin and Parrott voting against the motion.

Chairman Witham thanked the abutters for attending, noting that a continuation was a rare situation but he felt the drainage was a major issue and the Board would like to see a drainage plan and more accurate plans and elevations.

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Mr. Mulligan resumed his seat. Mr. Rheume recused himself from the following petition. Mr. Moretti continued in a voting seat.

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- C) Case # 12-8
  - Petitioner: Heidi N. Archibald Revocable Trust, Heidi N. Archibald, Trustee
  - Property: 175 Gosport Road
  - Assessor Plan 224, Lot 1
  - Zoning District: Single Residence A
  - Description: Construct a second single-family home on a lot with an existing single-family home.

- Requests: 1. A Variance from Sections 10.430 and 10.440 to allow a two-family use where the use is not allowed.
2. A Variance from Section 10.513 to allow two (2) residential dwelling units on one lot where only one (1) dwelling unit is allowed. (*This petition was postponed from the December 18, 2012 meeting*)

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

Attorney Douglas Macdonald, stating that he was representing the applicant, provided the Board with a letter from the Stanhope Group. He pointed out on the display the main residence and the second dwelling unit, noting that there had been two residential structures on the lot since 1971, with the property unique in being a four acre lot in a zone where only one acre was required. In December of 2009, the Board had approved a variance to continue two dwellings on the same lot in the configuration shown on the plan. The property was in need of repair and, during that process, the project was changed so that the secondary residence was renovated into a new primary residence which he indicated on the plan. The garage was all that remained of the original primary residence so that the applicants needed to again request two residences on a single lot.

Attorney Macdonald reviewed a sheet in the submitted packet which they had provided to demonstrate that what they proposed to build was characteristic of the neighborhood. He explained the other schedules provided with the application, including building coverage comparisons and open space information. Noting that this was a unique 4-acre property in an area of one-acre lots, with an historic use of two dwellings on the same lot, he maintained that, except for the lack of frontage, this size lot could have been converted into a three house subdivision with greater intensity than the proposed.

Attorney Macdonald stated that granting the variances would not be contrary to the public interest and he felt the same analysis leading to the 2009 approval, a copy of which had been provided, could be applied to this application. The use was consistent with the lot size, style and character of the neighborhood and could again accommodate two residential units. No setback relief was needed. The spirit of the Ordinance would be observed as the proposal was consistent with others in the neighborhood. In the substantial justice test, there was no other lot of that size in that area and, given the right-of-way restriction, there was difficulty in using the lot as it had been historically used. He submitted an appraisal from the Stanhope Group to support his contention of no diminution in the value of surrounding properties. He read from several sections of the submittal and referred to the tax map Stanhope had provided to demonstrate the difference in parcel size compared to others in the neighborhood. Attorney Macdonald stated that literal application of the provisions of the Ordinance would result in a hardship. He maintained that there was no fair and substantial relationship between the provisions of the Ordinance and their application to the property. Two residential structures had been on the lot since 1971 so the proposed use was reasonable with two single family residences, similar to others in the neighborhood, on a significantly larger lot. He provided and read into record a letter of support from the Londres family and distributed photographs of the property prior to the initial variance approval to demonstrate the improvements made.

Chairman Witham referred back to the 2009 approval where the second unit felt more like a guest house with a different analysis, which he didn't see applied to this proposal. A lengthy discussion followed among Chairman Witham, Attorney Macdonald, the owner Mr. James Archibald, Mr. Mulligan, Mr. LeMay and Mr. Parrott. They discussed the following:

- The differences between the 2009 submittal and the current one, including structure size, placement and open space, as well as elements which were similar.
- The changes to the property from the time of the previous granting of the variances to the filing of the current application.
- The location of the access right-of-way.
- The considerations involved in a possible future sub-division, with Attorney Macdonald maintaining it was not really an option due to frontage issues and this lot had sufficient area to carry two houses.
- The type of ownership that would be involved with two different owners and if the ownership issue would be before the Board.
- The buildable area of the 4-acre lot, with Attorney Macdonald stating there were no wetland issues, and whether three houses could be placed on the property with the attendant setbacks.
- The concern of several Board members that the plan was not adequately dimensioned for the proposed structures with no dividing line.

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

The following abutters spoke in opposition: Mr. Joseph Errico of 154 Gosport Road, Mr. Mark McVeigh, of 330 Odiorne Point Road, the property abutting the back yard of 175 Gosport, and Cheryl McCusker of 188 Gosport Road. Their concerns and conclusions included the following:

- Having more than one home on a lot being out of character in the neighborhood and setting a precedent.
- What would happen in the future with, as they believed, the property for sale.
- The value of their properties, noting that there had been previous mention of a home with a poolhouse, not a second home which they felt would negatively affect privacy, views and their peaceful enjoyment.
- That there was no case for hardship as the value of this property would increase while theirs diminished.
- That there would be more parking along the street.
- That there was a question about an easement to the water.

Mr. McVeigh read an excerpt from the applicant's appearance before the Conservation Commission in which it was stated that native vegetation and a large forested area would not be disturbed. He claimed they had "changed their tune."

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

Attorney Macdonald stated that an argument had been made for hardship, which was similar to that of the previous application, and he briefly reviewed how the petition met the criteria. He maintained that when some of the abutters moved in, the condition of the property was two



dwelling units and that a wonderful house had been built with a proposal to do the same with a second with sufficient space.

Mr. James Archibald, the owner of the property responded to Mr. Errico's statement that there were no other lots with two dwellings by noting that no other lots had the ability to do so. He acknowledged that Mr. McVeigh had bought his previous residence and they had relied on an expert to determine a value, which they had provided here, which was an expert opinion that the values of surrounding properties would not be diminished by a second dwelling on the lot. With respect to the view from the 330 Odiorne Street property, he maintained that the view from the bedrooms was through 340 Odiorne and not through his property. Addressing parking, he stated that there was enough driveway and land space on the property for multiple cars.

### **DECISION OF THE BOARD**

Mr. Mulligan made a motion to grant the petition as presented and advertised, which was seconded by Ms. Chamberlin for discussion.

Mr. Mulligan stated that it was significant that what had been represented was a second dwelling unit, whether a guesthouse or a rental unit had existed prior to 2009 when the prior variance was granted. There was only a short period since then when there were not two discreet dwellings and he noted that this was an unusually large lot.

Addressing the criteria, Mr. Mulligan stated that a second dwelling had been on the lot for a significant period of time prior to 2009 and restoring that situation would not alter the essential character of the neighborhood or threaten the health, safety or welfare of the public. Regarding the spirit of the Ordinance, the property was in the Single Residence A zone. This proposal for two dwellings on 4 acres would meet the purpose of that zone which was to provide for single family homes of low to medium density. In the justice balance test, he stated that the loss to the applicant if the petition were not granted would be greater than any corresponding benefit to the public. An additional dwelling was consistent with the density and relief previously granted. Mr. Mulligan stated, as supported by the Stanhope appraisal, the value of surrounding properties would not be diminished by a second dwelling unit which was consistent with the historical development of the property. The special condition distinguishing this property and creating a hardship was that this was a large lot and only one acre was necessary for a dwelling in this zone. While it was understood that not all of the 4 acres was buildable, two dwellings could fit within the buildable envelope. He acknowledged that it had been pointed out that there were other avenues if the applicant wanted to pursue subdivision approval and stated that it shouldn't matter which way they went. What mattered was the significantly larger lot.

Ms. Chamberlin stated that she had seconded for discussion and wouldn't support the petition. She didn't see the hardship in the property and felt that subdivision would be a better way to go.

Mr. Parrott commented that the spirit of the Ordinance test required that they not make a condition worse and, if you could easily comply with the Ordinance, which this property could, they should not be looking for a substantial variance. Much had been made of the previous two living spaces on the property but they had been located at the center of the lot, not quite close to one of the sidelines. He maintained it wasn't the same thing and introducing a second unit would diminish values and change the character of the neighborhood.

Chairman Witham stated that he would not support motion. He recalled the scrutiny given when the Tucker’s Cove subdivision was created. He felt that, with all the tinkering, if it had been felt that two houses should be on the lot, it would have been done at that time. He felt neighbors had bought in the neighborhood with an awareness of what was allowed.

The motion to grant the petition as presented and advertised failed to pass by a vote of 1 to 6 and the petition was denied. Ms. Chamberlin and Messrs. Durbin, LeMay, Moretti, Parrott and Witham voted against the motion.

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Mr. Rheame resumed his seat and Mr. Moretti returned to an alternate seat.  
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Chairman Witham announced that the applicants for 973 Islington Street had requested to postpone their petition to the February 19, 2013 meeting.

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#### **IV. PUBLIC HEARINGS**

- 1) Case #1-1
  - Petitioner: Northern N. E. Conference
  - Property: 861 Middle Road
  - Assessor Plan 232, Lot 120
  - Zoning District: Single Residence B
  - Description: Expansion of religious assembly use.
  - Requests: 1. A Special Exception under Section 10.440, Use #3.11 to allow the existing religious assembly use to be conducted in an additional building.
  - 2. A Variance under Section 10.1112.30 to allow 58 off-street parking spaces where 63 parking spaces are required.

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

Attorney Bernard W. Pelech stated that he was representing the Northern New England Conference of the Seventh Day Adventist Church and referenced the materials and narrative he had submitted. They proposed to construct a fellowship hall at the rear of the property with no variances needed for the structure. He contested the decision of the Planning Department that a parking variance was needed believing that limiting the number of occupants in the rear structure eliminated that need. In any event, he believed the variance relief was reasonable.

Attorney Pelech stated that the fellowship hall would accommodate functions, such as coffee after services, that were currently held in the basement of the church which was not large. With the proposed rain gardens and landscaping, storm water runoff on the site would be improved as there was currently no drainage plan. In response to neighbors concerns about a withdrawn petition in August, Berry Surveying had developed the submitted intense landscaping plan. Another change was the removal of parking and accessways to the rear and sides of the building. Reducing the

proposed occupancy to 132 left them, he had believed, with a requirement for 58 spaces which they thought was in compliance. They would try to provide 63 spaces if that was what was needed. He described the existing conditions on the site with 48% of the lot wooded, 30% lawn, 20% pavement and 2,000 s.f. of building. The proposed would reduce the wooded percentage to 40% and the lawn to 20% with the pavement increased by 9,000 s.f. for the parking. The square footage of buildings would increase due to the new structure. None of this would be a drastic change impacting how they met the requirements for a special exception.

Addressing the requirements, Attorney Pelech stated that there would be no hazard to the public or adjacent property from fire explosion or release of toxic materials as there was nothing in the church that would create a hazard. No traffic or safety hazard would be created. People coming for a weekly church group meeting would now meet in the fellowship hall instead of the basement with no change in the amount of traffic. He stated that there would be no excessive demand on municipal services as the water and waste disposal would replace that generated by uses previously in the church. He reiterated that storm water runoff would actually improve due to the rain gardens and other means. There would be no change to surrounding property values or the essential character of the neighborhood due to size or scale. There was a church there now and the proposed building met zoning requirements. With the existing wooded area, proposed landscape plantings and a 6' solid fence, the property would be well screened from the neighborhood

Attorney Pelech stated, regarding the variance, that the use of the property was on Saturdays and Sundays and rarely during the week, with the parking lot never full. Increasing the parking spaces by 5 to bring the total to 63 would be at the expense of landscaping and green space. Addressing the criteria, he stated that granting the variance would not change the essential character of the neighborhood or diminish the value of surrounding properties. In the justice test, the hardship on the applicants if the variance were denied would not be outweighed by some benefit to the general public. He stated that the hardship with respect to the parking were the ledge outcroppings, existing structures and trying to maintain green space. They felt 58 spaces was adequate and there was no need for the additional 5 spaces. He noted that Mr. Chris Berry, from the survey firm, and Mr. Kurt Amos, from the church, were there for any questions.

Mr. Mulligan asked about the removal of the existing structures shown to the left of the church and Attorney Pelech stated they were already gone. Mr. Rheame noted that moving the functions currently held in the basement increased the occupancy from 100 to 132 and questioned why they needed the additional space. Mr. Amos responded that the function area in the church was 19' x 35' and only 50 members could squeeze in, leaving others standing. The kitchen was 6' x 8' and they had been looking to expand for 6 years. He noted that they did not believe in gambling and this would not become a bingo hall, but they would like to host some community events or seminars open to the public. In response to a further question, he confirmed there would be a larger kitchen in the new structure, along with appropriate restrooms and storage.

Mr. Rheame noted that they had addressed in the narrative why the right side of the property was ruled out as a location due to ledge. A discussion followed, with Chairman Witham, Mr. Amos and Mr. Berry participating, about the possibility of placing the structure on the right side and the impediments posed to that possibility by the presence of ledge. Chairman Witham estimated that it would cost \$20,000 for ledge removal and Mr. Amos maintained it would be around \$50,000. Mr. Berry outlined the physical aspects and difficulties of removing the ledge, adding that they

had also considered and decided against adding onto the church as it would be labor intensive and cost prohibitive.

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

The following abutters and interested parties spoke in opposition, some reading or referring to material they had submitted to the file: Ms. Joanne Brawn, of 121 Pearson Street, Mr. John Wenburg, 77 Middle Road (Unit 58, Riverbrook Condominiums), Mr. Avi Magidoff of 133 Pearson Street, Mr. Brian Brawn, 121 Pearson Street, Mr. Scott Theurer, 790 Middle Road, Mr. Richard Wentworth of 126 Pearson Street, and Mr. Joshua Demarco of 58 Pearson Street. The following additional parties spoke: Ms. Susan Seiden, President of the Riverbrook Condominium Association, with the following owners of units: Mr. Roy Helser, Ms. Ann Hett, Ms. Amanda Hardman and Ms. Carol Connery. Additionally: Stan Whitney of 107 Pearson Street and Mr. Jason Combs of 834 Middle Road.

Their assertions/concerns included the following:

- That the essential character of the neighborhood would be changed by a large structure out of scale with the neighboring buildings. They bought their properties due to the residential nature of the area.
- That property values would be decreased. Granting this would be good for the church, but not for the neighbors, or the City, as the church is tax exempt.
- That the Pearson Street properties would be negatively impacted by this expansion into the rear wooded area.
- That the expanded parking area would increase water runoff.
- That the standards for a special exception were not met as there would be increased noise and light pollution.
- That the hardship test could not be met. They could expand in the basement of the church where there were 2 or 3 classrooms along the side.
- That a majority of the members did not live in Portsmouth and this could become a hub for events for out of town participants, resulting in increased traffic.
- That the scale of the building was the same as previously proposed but the proposed occupancy had risen from 60 to 100.

Submittals included photographs of the proposed building site taken from various properties, a small packet from Mr. Magidoff and petitions from Ms. Brawn and Ms. Seiden. Mr. Combs raised a concern with overflow parking. Questioned by Mr. Mulligan, he stated that there had been two overflow instances in the past due to activity at the church.

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

Mr. John Cronin of 860 Middle Road stated that the church had been a good neighbor who had improved the property by removing an eyesore. While there had sometimes been an overflow, it was not significant and the church had handled it appropriately. He felt they did a good job of developing a design in touch with the current building and set back from the road. He understood the concerns, but felt they could be addressed.

Attorney Pelech stated that the parking area existed. Drainage and runoff would be subjected to extensive scrutiny by the Site Review Committee and the Planning Board before anything would be approved.

Mr. Berry stated that the original site plan submitted in July was devoid of information with no grading or storm water design. The newly submitted plan was not a concept plan, but a proper site plan that was nearing Planning Board submission stage. While they hadn't submitted a TR55 or a hydrocad analysis of storm water calculations, they did it in the office to determine the size of the rain garden and the impact on downslope abutters. This would be a very thick report which they had planned on including with the Planning Board submission. Mr. Berry stated that the abutters were correct in that much of the storm water from surrounding sites did move down through this site. Correcting a buzz word that had been thrown out, he stated that they had a State Board Certified wetlands scientist look at the site and he found no jurisdictional wetlands. The water just moved through the site during high rain events and they were proposing grading to handle the flow of water and direct it to the low impact development device they had chosen, the rain garden shown on the plan.

He stated that some of the dimensions were inaccurate, noting that they had moved the structure in response to comments made in August. They had listened and analyzed the amount of space the church needed as it related to the surrounding property owners. What they were proposing was 61.5' from the rear boundary line and 52.5' from the closest abutter. They would retain much of the natural buffer and provide a landscaping plan with opaque screening, a fence and trees that would grow and fill in. Finally, the berm, originally proposed to be removed, would remain to keep as much privacy as possible. Regarding light pollution, he stated that they would have to provide a splash plan during the Planning Board process so that lights would not shine into windows.

Mr. Parrott noted that one of the submissions didn't have clear delineation of the front boundary and asked if it was about 245' frontage on Middle Road. They briefly discussed measurements shown on two different plans with Mr. Berry confirming that the 245' figure was correct.

Mr. Demarco reiterated his concerns..

Mr. Kurt Amos, a representative from the church, cited a question raised earlier about a 160 number. They currently had a regular attendance of 60 going up to 80. The capacity on the church was 100. A question was raised about sister churches and other uses. He mentioned "Bible Bowl" earlier as a function where they did have people come together, currently in the basement. There were other churches such as in Rochester. One or the other would serve as the location for events. They did not consider the option of widening the church. It would completely cut off one of the egresses and they could only get their capacity to about 85 without blowing out the entire wall of the church doubling the cost of the project. One of the abutters had mentioned a letter that was to go around. They had included it in this packet but weren't sure if that would be sent out as part of the certified mailing or not. He had sent a copy to Mr. Magidoff who had said communications should be sent to him and they would make sure it got to everybody else. Again, they looked at a lot of these components and were trying to be good neighbors.

## **DECISION OF THE BOARD**

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

Mr. Rheume stated that, while he felt that the applicant had met a number of the standards for granting a special exception, a number were questionable. He did not feel there would be a hazard from fire explosion or release of toxic materials. He struggled with #3, whether there would be a detriment to property values or change in the essential character of the neighborhood. He felt there had been good testimony to the effect that the neighborhood was entirely residential with the exception of this property. There was much that was positive in the neighborhood and a 2,000 s.f. church was a quaint addition to what was happening. The amount of parking was not overwhelming and could still fit the essential character but a 3,700 s.f. addition on the same lot would result in over-intensification and change that quaint addition to something that belonged in a different neighborhood. While the condominium development occupied a lot of space, it was tasteful and fit in the neighborhood. He didn't feel the argument for the impact on property values was as strong as changing the essential character, but they could be affected. The inherent value of the Pearson Street properties in particular could be based on the surroundings.

Mr. Parrott stated that he had the most trouble with standard #3 as well. With respect to detriment of property values, they had some expert testimony that the proposal could be a negative and houses next to woods were a lot more desirable than looking at a large function hall, which was different from a building of worship. He felt that the structure was inappropriate in this district due to the location and scale of the building. This appeared to be a lot more development than what would be represented by two houses in the same area. It had a commercial aspect very close to residential properties. Mr. Parrott stated that, in addition to standard #3, #6 and possibly storm water runoff were not met. He felt that the building could be put in a more acceptable location to minimize loss to abutters.

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

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It was moved, seconded and passed by unanimous voice vote to waive the ten o'clock rule.  
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- 2) Case # 1-2
  - Petitioners: Peter E. & Vanessa P. McElroy
  - Property: 106 Spring Street
  - Assessor Plan 133, Lot 15
  - Zoning District: General Residence A
  - Description: Install a 4'± x 2'± generator in the left side yard.
  - Requests: 1. A dimensional Variance from Section 10.571 and Section 10.521 to allow a left side yard setback of 5.5'± where 10' is the minimum setback required for an accessory structure.

**SPEAKING IN FAVOR OF THE PETITION**

Attorney Bernard W. Pelech stated that he was appearing on behalf of the McElroy's who wanted to install a 4' x 2½' generator on the left of the existing structure. Noting that this was a very narrow lot, he stated that this was the appropriate location as it would be in the middle of the driveway if placed on the right. He stated that the applicants had received a variance for an addition one or two years ago which allowed 4.2' as a left side yard setback. There was a 10' area between the foundation and the fence and the generator had to be 5' from the building. He maintained that the hardship was that the fact that there were no other options except to locate the generator where it was proposed due to the shape of the lot and the location of the existing house on the lot. This would not change the essential character of the neighborhood and would be screened by a fence so that the value of surrounding properties would not be diminished. Substantial justice would be done in granting the request as the hardship on the applicant if the request were denied would not be outweighed by any benefit to the general public.

Mr. Parrott asked why the generator could not be placed in the back yard and Mr. McElroy stated there was an L-shape back there and it would literally have to be placed in the middle of the back yard. This seemed the most reasonable location, not too close to any property line and in proximity to the home. Mr. Rheume noted that, when he visited, the unit seemed to be installed and Mr. McElroy stated it was not installed yet, just sitting there.

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

Mr. Mulligan stated that granting the variance would not be contrary to the public interest. This was not going to alter the essential character of the neighborhood. It might enhance the welfare of the public if the applicant shared electricity in an emergency. The property was located in a residential zone and it would be in the spirit of the Ordinance to allow an accessory use consistent with that zone. Substantial justice would be done as any gain to the general public in denying the variance would be overwhelmed by the damage to the homeowner. He stated that the value of surrounding properties would not be diminished by a well-screened generator. Literal enforcement of the provisions of the Ordinance would result in unnecessary hardship due to the special conditions of the property, which were the narrowness of the lot and the way the house was constructed on it. The placement of the generator as proposed was appropriate with the only problem that it impeded on a setback. So there was no fair and substantial relationship between the general purposes of the Ordinance and the specific application to this property. He stated that this was a reasonable use of the property.

Mr. LeMay agreed with the maker of the motion.

Mr. Rheume stated that it helped to have a garage between the proposed location for the generator and the next house so there would be noise issues.

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

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Chairman Witham asked the next applicant if they would be willing to postpone their petition to the end of the meeting so that the members of the public there for the upcoming petitions could get home. The representative for the applicant agreed to be taken out of order.  
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- 4) Case # 1-4
  - Petitioner: 973 Partners LLC, owner, Portsmouth Music and Arts Center, applicant
  - Property: 973 Islington Street
  - Assessor Plan 172, Lot 5
  - Zoning District: Business
  - Description: Establish a music and art studio.
  - Requests: 1. A Variance from Section 10.1112.30 to allow 18 off-street parking spaces to be provided where 60 parking spaces are required.
  - 2. A Special Exception under Section 10.440, Use #4.42 to allow a music & art studio for instruction in a district where the use is only allowed by Special Exception.

Chairman Witham referred to his earlier announcement regarding the request to postpone this petition.

Mr. Parrott made a motion to postpone the petition to the February 19, 2013 meeting, which was seconded by Mr. Durbin and approved by unanimous voice vote.

- 5) Case # 1-5
  - Petitioners: Cheri & William Kane
  - Property: 35 Summit Avenue
  - Assessor Plan 230, Lot 15
  - Zoning District: Single Residence B
  - Description: Reconfigure front steps.
  - Requests: 1. A dimensional Variance from Section 10.521 to allow a front yard setback of 14'± where 22'± is required after front yard averaging under Section 10.516.10.

**SPEAKING IN FAVOR OF THE PETITION**

Mr. David Richards stated that he was the contractor representing the Kanes who were seeking a variance to reconfigure their front steps. He referred to the submitted plans, the first of which outlined their property and the second showing the platform and steps. Adding the few feet would eliminate the safety hazard of opening the porch door and falling down the steps. Referring to his submittal he provided the measurements for the five steps. He had talked with Nick Cracknell initially and was under the impression that the required front setback was 18' but found that it was 22', which he felt came from front yard averaging. The proposed setback remained 14'.



Mr. Nick Cracknell identified himself as the Principal Planner stating that Mr. Richards’ comment was correct. 18’ was the existing setback. The variance was to add 4’ in depth to the landing at the top of the stairs, moving the stairs 4’ closer to street. He confirmed that the 22’ requirement was obtained by averaging the front yard setbacks on the street.

Addressing the criteria for a variance, Mr. Richards stated that granting the variance would not be contrary to the public interest as adjusting the stairs was not going to change the essential character of the neighborhood. He maintained it would serve the spirit of the Ordinance and promote the public good to correct a safety issue. Substantial justice would be done as the proposed changes would address the safety issue while appealing to the eye and without obstructing the public view or access. A visual improvement would, if anything, improve the value of surrounding properties. Mr. Richards stated that a hardship would be created if the setback requirement were enforced as it would be more difficult to remove the safety issue with the least amount of aggravation. He referred to the distributed photographs of surrounding homes, some of which had the same safety issue. They had approached the neighbors and received six letters in support, which had been submitted.

Mr. Parrott asked if the work had already been framed out and Mr. Richards replied, “yes.”

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

With no one rising, the public hearing was closed.

**DECISION OF THE BOARD**

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

Mr. Mulligan stated that he would like to carry forward his reasons for finding that an application met the criteria from the comments he made in support of his motion on the previous petition. Mr. Durbin agreed.

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

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- 6) Case # 1-6
  - Petitioners: Gary S. & Janice M. Colby
  - Property: 308 Pleasant Street
  - Assessor Plan 109, Lot 18
  - Zoning District: General Residence B
  - Description: Expand existing rear deck.
  - Requests: 1. A dimensional Variance from Section 10.521 to allow a building coverage of 35%± where 33.5%± exists and 30% is the maximum allowed.

**SPEAKING IN FAVOR OF THE PETITION**

Mr. Richard Page stated that he was representing the applicants. Referring to the submitted packet, he stated there was an existing porch and an alcove with three casement windows and no deck. They wanted to extend the deck across the alcove. On page 4 of the submitted plan, the Board could see the circled proposed deck which was almost at the dead center of the property in the back of the building, which was tight to Pleasant Street. He stated that this deck would allow them better access to the back yard. When Mr. Mulligan asked if the proposed deck would extend any further than the existing one, he stated it would not.

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

With no one rising, the public hearing was closed.

**DECISION OF THE BOARD**

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

Mr. LeMay stated that granting the variance would be in the public interest and observe the spirit of the Ordinance as there would be no change in the neighborhood. This was a very small infill and substantial justice would be done by allowing a deck with no loss to the public interest. There would clearly be no diminution in the value of surrounding properties and the deck would probably not be visible to most abutters. The hardship in the property resulted from the size and configuration of the lot and the pre-existing use. This would be a small expansion of a nonconforming use.

Mr. Parrott stated that he concurred with nothing to add.

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

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Mr. Rheame recused himself from the following petition. Mr. Moretti assumed a voting seat.

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- 3) Case # 1-3
  - Petitioners: John Ahlgren & Bessie J. Palmisciano
  - Property: Langdon Street (no number assigned)
  - Assessor Plan 138, Lot 48
  - Zoning District: Mixed Residential Business
  - Description: Construct a single family home on each of three lots created by the proposed sub-division of one existing lot.
  - Requests:

1. Lot 1 (corner of Langdon and McDonough Streets)  
Dimensional Variances from Section 10.521 to allow the following:
  - a. A lot area of 5,022± s.f. where 7,500 s.f. is the minimum required.
  - b. A lot depth of 78.47'± where 80' is the minimum required.
  - c. Continuous street frontage of 63.35'± where 100' is the minimum required.
  - d. A 5'± right side yard setback where 10' is the minimum required.
  
2. Lot 2  
Dimensional Variances from Section 10.521 to allow the following:
  - a. A lot area of 5,301± s.f. where 7,500 s.f. is the minimum required.
  - b. A lot depth of 77.39'± where 80' is the minimum required.
  - c. Continuous street frontage of 68.50'± where 100' is the minimum required.
  
3. Lot 3  
Dimensional Variances from Section 10.521 to allow the following:
  - a. A lot area of 4,965± s.f. where 7,500 s.f. is the minimum required.
  - b. A lot depth of 76.84'± where 80' is the minimum required.
  - c. Continuous street frontage of 43.24'± where 100' is the minimum required.
  - d. A 5'± left side yard setback where 10' is the minimum required.

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

Mr. John Chagnon stated that he was with Ambit Engineering, along with Joan Crotty, Esq. as well as Mr. Dave Lauze from Chinburg Builders. He stated that the variance requests were associated with the subdivision of one lot into four. He listed the street frontages and square footage of proposed lots 1 through 3, noting that lot 4 would be deeded to the City of Portsmouth for access use if they desired as both Langdon and Brewster Streets were dead end streets. As history, he stated that Mr. Ahlgren had purchased some land from the Boston & Maine Railroad and added to his property creating a large L-shaped lot. In a district requiring 7,500 s.f. per dwelling unit, he would be allowed to create three units. Rather than setting up a condominium, the owner would prefer to create the three units by subdivision so that they could be conveyed by fee simple. They felt it would also be better for the neighborhood to have individual unit owners having ownership of the land.

Mr. Chagnon reviewed what had been submitted in the packet, including a neighborhood aerial view with a table of lot areas within a 200' radius of the proposed lots. Of those 36 lots, only 4 met the required 7,500 s.f. lot area, averaging 3,976 s.f. Their proposed lot was 25% larger and in keeping with the existing lot sizes in the neighborhood. Also in the packet was a list of variances needed and he listed what was requested for each lot. The conceptual development plan was included to show proposed structures for each lot and give the Board a flavor for what would be developed. He pointed out that, on the McDonough Street side, they moved to a 5' setback where 10 was required as structures on that street were closer or further to the south than this house would be. From the streetscape the setback would look more generous. As the sidewalk was not at the property line, it would feel like the required 10' setback. He explained that if lot 4 were not given to the City, part of lot 3 would not need a setback variance. They felt the City could use

lot 4 for plowing and utilities for other projects. Mr. Chagnon showed a rendering of the streetscape view of the proposed houses and some views of the houses, which were in the packet. He distributed a landscape plan. They had met with neighbors to answer questions, which were more related to the site plan, drainage and grading which would be addressed by the Planning Board. In response to the request that McDonough Street not be walled off, they were proposing a low picket fence with open spaces between the pickets.

In response to questions from Ms. Chamberlin, Mr. Chagnon confirmed that these would be single family homes and the lots were currently empty.

Attorney Anne Crotty addressed the criteria stating that the project would not change the essential character of the neighborhood so that it would not be contrary to the public interest. They felt it was in the spirit of the Ordinance to develop the property into single family owned homes rather than condominiums. In the justice balance test, she stated that granting the variances would allow a better use of the property with no benefit to the general public if they were denied. Three single family homes could be built by right and granting the variances would keep them from being three detached condominium units. She stated that due to special conditions of the property, no fair and substantial relationship existed between the purposes of the Ordinance and the restriction on the property. This was a large l-shaped lot, equal to or larger than others in the area. The requested variances would allow three single family homes to be built and owned outright and allow conveyance of lot 4 to the City. She stated that this was a reasonable use.

Mr. Dave Lauze stated that he was with Chinburg Builders and they had worked with Nick Cracknell to implement what would work well in the area. They were pushing buildings to the front to leave open back yards. This would be an attractive project that would enhance the neighborhood and comply with what was already there.

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

No one rose to speak.

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

Mr. David Rheume stated that he lived at 18 McDonough Street, a direct abutter to the vacant lot in question, #138-27 on the map the Board had been provided. He was also a member of the Board of Adjustment but believed, as a direct abutter, he was allowed to speak.

Chairman Witham confirmed that he could speak.

Mr. Rheume stated that the applicants were correct in saying that a vast majority of the concerns had been raised, most of which would fall to the Planning Board. He stated that the lot currently served as an outlet valve especially during snow emergency events as parking in that neighborhood was a large issue with most of the homes not having driveways where they could park vehicles. Leaving it an empty lot would be his personal preference but they had no realistic expectation for that to occur in the future. This would be the best overall solution and property values would be far more increased with three separate lots under sole ownership, and the types of occupants that would be in those homes would likely help the neighborhood.

He outlined the challenges for parking, noting that the transfer of the back piece to the City could be an opportunity to mitigate lost parking due to the loss of the lot. Referring to the most recent Concept Development Plan submitted by Chinburg Builders, he requested that the two added notes be given additional force by making them actual stipulations to any motion. He read Notes 2) and 3) from the plan dealing with keeping the constructed homes in substantial compliance with the plans submitted with this petition and capping the height of the fence along McDonough Street at 42", maintaining openness to prevent a sense of confinement along the street.

Mr. Rheame addressed the 5' setback to the lot line, which he had also addressed at the neighborhood meeting. Currently, there was a City owned grassy area there adding a natural effect to the sidewalk and giving the impression of a 10' setback. They were going to be trying to press with the City, who would be coming through hopefully in the near future to re-do their portion of McDonough, to increase parking. He suggested possibly pushing the sidewalk back closer to the edge of the City's property line to try and increase parking there at least during non snow emergency timeframes. Moving it 5' closer to his house or 5' further away might not make much difference but was something to consider. Referencing again that parking was going to be much more pressing without the use of the empty lot, he stated that there was a fence at 13 McDonough Street that was actually on the property belonging to the applicant. His concern was that the fence provided a driveway for #13 and, if it were pushed back closer, it still be far enough from the home at #13 so that someone could still park there

Mr. Lauze stated that that, when they had worked with Nick, it was imperative that they provided the parking spots which he indicated in two locations on the exhibited plan. At the neighborhood meeting, there was a request that we would post signs that there was no parking on the street and we would comply with that. In other words, there was additional parking there plus the garages.

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

## **DECISION OF BOARD**

Chairman Witham stated that they could take this as a whole. While it had been mentioned in the presentation, he wanted to reiterate that the proposal as the Board saw it could be built without variances and by being structured as a condominium project. They applicants wanted to have each unit have individual owners.

Mr. LeMay asked if they would not still need a variance for sideline setbacks. Mr. Cracknell stated only for the 5' one on McDonough. There was clearly added value in fee simple ownership. He felt the spirit of this design process was not to just enhance value to the developer but provide the neighborhood with protection using fencing and parking. The quality could be guaranteed in a way not possible with condominium ownership.

Chairman Witham stated that, from his experience, he felt that the neighborhood as a whole would be better off with single family homes as opposed to condominium units. He entertained a motion, noting that Mr. Rheame had requested several stipulations, which were taken from the plan placed before them that evening. Chairman Witham suggested a final suggestion that the lot be developed in substantial compliance with the landscape plan submitted that evening. It would get tied in with the Planning Board also, but this Board would have noted their intentions.

Ms. Chamberlin made a motion to grant the petition as advertised and presented with the stipulations based on the notes on the submitted Langdon Street Plan and the stipulation on the landscaping. The motion was seconded by Mr. Moretti.

Ms. Chamberlin stated that granting the variance would not be contrary to the public interest and would observe the spirit of the Ordinance. While they could go forward with condominiums, it was actually enhancing the neighborhood to proceed with individual homes. Substantial justice would be done as this property was currently an empty lot. New Homes would provide housing and improve the neighborhood. The unnecessary hardship would be the special condition of having a railroad on one boundary and a street on the other. With the stipulations, the character of the neighborhood would be maintained.

Mr. Moretti stated that this was a great looking project which could be a lynchpin to get things started in an up and coming neighborhood. With the improvements coming to McDonough Street, this will be a step in the right direction.

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

- As represented on the Concept Development Plan revised January 10, 2013, the three homes to be built on the lots will be in substantial compliance with the massing, location and architectural theme of the plans submitted with the application.
- As represented on the Concept Development Plan revised January 10, 2013, any fence installed along McDonough Street shall not exceed 42” in height and shall be open, architectural in nature in order to prevent a sense of confinement along the street.
- The lots shall be developed in substantial compliance with the landscape plan, LA-1.0 dated 1/15/2013, as submitted and presented at the hearing.

**V. OTHER BUSINESS**

**VI. ADJOURNMENT**

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It was moved, seconded and passed by unanimous voice vote to adjourn the meeting at 11:50 p.m.

Respectfully submitted,

Mary E. Koepenick  
Administrative Clerk