

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

MUNICIPAL COMPLEX, 1 JUNKINS AVENUE

EILEEN DONDERO FOLEY COUNCIL CHAMBERS

7:00 p.m.

November 17, 2009

MEMBERS PRESENT: Chairman Charles LeBlanc, Thomas Grasso, Alain Jousse, Charles LeMay, Arthur Parrott, Alternates: Derek Durbin

EXCUSED: Vice Chairman David Witham, Carol Eaton, Alternate Robin Rousseau

ALSO PRESENT: Principal Planner, Lee Jay Feldman

I. APPROVAL OF MINUTES

A) September 15, 2009

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

II. NEW BUSINESS

A. Draft - Revised Board of Adjustment Rules and Regulations

Mr. Feldman announced that proposed revisions to the Board of Adjustment Rules and Regulations had been distributed so that they could be studied prior to the December 1, 2009 work session.

III. OLD BUSINESS

7) Case # 10-7

Petitioner: Jon Schroeder

Property: 324 Maplewood/ Assessor Plan 141, Lot 1

Zoning district: Mixed Residential Office

Request: Variance Requests

Article III, Section 10-301 (A)2 to allow a dwelling unit in each of two (2) free-standing buildings on the same lot.

Article III, Section 10-303 (A) to allow 1,780 square feet of lot area per dwelling unit, where 7,500 square feet of a lot area is required.

Article III, Section 10-303 (A) to allow a rear yard setback of 5.47 feet where 15 feet is required; a right side yard setback of 1 foot where 10 feet is required; and a left side yard setback of 6.21 feet where 10 feet is required.

Article IV, Section 10-401 A (2)(c) to allow expansion of a non-conforming structure by addition of a second story. Article XII, Section 10-1201(A)(3) to allow the required parking spaces to back out onto the street where such parking layout is not allowed.

Chairman LeBlanc advised that a request had been received to postpone hearing this petition due to the unavailability of the petitioner’s attorney. It was moved, seconded and passed by unanimous voice vote to postpone the petition to the December 15, 2009 meeting.

Chairman LeBlanc announced that the remaining two petitions under Old Business, regarding 249 Clinton Street and 166 New Castle Avenue, as well as the first petition under New Business regarding 187 Wentworth House Road, had been withdrawn and no action was needed by the Board.

8) Case # 10-8
Petitioner: Donna L. Morse
Property: 249 Clinton St. Assessor Plan 159, Lot 11
Zoning district: General Residence A
Requests: Variance Request
Article IV Section 10-401(A)(2)(c) to allow the expansion of a nonconforming structure

Withdrawn as noted.

9) Case # 10-9
Petitioners: David J. Tooley and Vasilina Tooley
Property: 166 New Castle Ave. Assessor Plan 101, Lot 24
Zoning district: Single Residence B
Requests: Variance Requests
Article III Section 10-302(A) Table 8 to allow a rear yard setback of 10” where 30’ is required
Article III Section 10-302(A) Table 8 to allow a side yard setback of 8’5” where 10’ is required
Article III Section 10-302(A) Table 8 to allow a building coverage of 50% where 20% is required
Article III Section 10-302(A) Table 8 to allow open space coverage of 32% where 40% is required
Article IV Section 10-401(A)(2)(c) to allow the expansion of a nonconforming structure

Withdrawn as noted.

IV. PUBLIC HEARINGS

1) Case # 11-1

Petitioner: J.P. Nadeau owner, and Witch Cove Marina Development, LLC

Property: 187 Wentworth House Road Assessor Plan 201, Lot(s) 12, 17 and 18

Zoning district: Waterfront Business District

Request: Variance Requests:

From Article II, Section 10-208, Table 4, to allow 4 single-family dwellings in the Waterfront Business District where residential uses are not allowed;

From Article III, Section 10-301(7)(a) to allow construction of a yacht club structure and 3 single-family dwellings as well as a 600 square foot garage within the 100' inter-tidal zone adjacent to Sagamore Creek;

From Article III, Section 10-304(A), Table 10, to allow a structure with a left side yard of 12 feet where the side yard requirement is 30 feet;

From Article XII, Section 10-1201(A)(1)(b) to allow 25 required off-street parking spaces to be located more than 300' from the use that they serve.

From Article IV, Section 10-401(A)(2)(c) to allow for the vertical expansion of two (2) nonconforming structures; and

Special Exception Request:

Under Article XII, Section 10-1201(A)(1)(b) to allow parking on another lot in the same ownership, provided all spaces lie within 300 feet of the lot in question

Withdrawn as noted.

2) Case # 11-2

Petitioner: Jeffery A. Koss

Property: 102 Dennett Street Assessor Plan 140, Lot 16-2

Zoning district: General Residence A

Requests: Variance Request

From Article III, Section 10-301 (A)(7)(b) to allow a structure within 100 feet of the mean high water line of the North Mill Pond

SPEAKING IN FAVOR OF THE PETITION

Mr. Jeff Koss stated that he would like to fill in a small space between the existing 8' x 14' deck and the building. His hardship was that there was limited space available and this was space that could be useful.

In response to questions from Mr. Jousse, Mr. Koss stated that the deck had existed before he moved in two years ago. He stated he had no answer when Mr. Jousse noted that there were decks on the property with pressure treated wood and all within the 100' setback and wondered how they had gotten there. Mr. Feldman added that there had been no previous history for that property in the files so he was not sure if the decks had been allowed by right in some previous ordinance, or how it

had been accomplished. Chairman LeBlanc speculated that they could have been there and been repaired, with no variance needed, which could explain the pressure treated material. Mr. Feldman noted that Mr. Koss also had to apply to the State for a permit and Mr. Koss stated that the department of wetlands had also looked into it. They might have been part of a build-up before he purchased the property.

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

Mr. George Dempsey stated that he lived to the left on 42 Dennett Street and that there had been a permit pulled on the project at one point. He thought the decks had been “bootlegged” in with no approval prior to this applicant’s purchase. All three of the properties were sold after the decks were added. He didn’t see any dramatic change and supported the petition. A 4’ x 8’ section was not asking a lot.

Mr. LeMay asked if he knew when the other decks went in and Mr. Dempsey stated he did not know but there had been a permit pulled and that would be the way to get the actual date, probably between 4 and 6 years ago. Mr. Feldman stated that, if they had just pulled a building permit it would not be in the Board of Adjustment files which the clerk researched and he would not have it there, but it would be in the records of the Inspection Department.

DECISION OF THE BOARD

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

Mr. Jousse stated that he didn’t believe that a 4’ x 8’ infill between the stairs and the primary building was contrary to the public interest. This was a rather small piece of property and any living space which could be added would be a benefit. The restriction as applied would be a detriment to the property owner as this was a very unique piece of property even for this old neighborhood. He didn’t believe there was a fair and substantial relationship between the general purposes of the ordinance and the restriction on the property and the public and private rights of others would not be injured. The infill would only be seen from the water and by maybe three other pieces of property and nobody would be adversely affected. He stated that substantial justice was done and granting the variance would be consistent with the spirit of the ordinance. Nothing had been presented as to the surrounding property values.

Mr. LeMay stated that he agreed and added that it was reasonable to assume that the stairs had been back there for a long time, one way or the other.

Mr. Feldman added as a side note that this was the last time they would have to deal with this issue as the proposed new ordinance moved issues such as the setbacks from the tidal marsh to the Conservation Commission and the Planning Board.

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

3) Case # 11-3

Petitioners: Tara E. Olson & Kenneth R. Olson

Property: 1 Forest Street Assessor Plan 210, Lot 12

Zoning district: Single Residence B

Request: Variance Requests:

From Article IV Section 10-401(A)(2)(c) to allow the expansion of a nonconforming structure;

From Article III Section 10-302(A) to allow for the construction of a 24'x 24' garage with a 20' frontyard setback where 30' is required;

From Article III Section 10-302(A) to allow for the construction of a 20'x 16' room with a 24' frontyard setback where 30' is required.

SPEAKING IN FAVOR OF THE PETITION

Ms. Tara Olsen stated that she was there with her husband, Ken. They were proposing construction which did not meet the 30' required front setback and had addressed in their submitted letter the reasons why they felt the request met the criteria for granting a variance. They wanted to highlight three of the reasons and also had notes in support from neighbors, which she passed to the Board.

Ms. Olsen stated, first, that Forest Street was a paper street, or right-of-way and had never been developed as a city street. There were two or three similar streets in their neighborhood and PSNH had an easement for power lines which extended to Int. 95. It was unlikely that Forest Street would ever be anything other than what it was now and, therefore, a variance from the 30' front setback seemed a reasonable request. Second, a garage would lessen the burden of snow removal. They both had health issues and, without a garage, it was difficult. As a third point, Ms. Olsen stated that they had considered alternative placements, but couldn't find a reasonable and equivalent benefit. She outlined several alternatives considered which included one which was rejected as it would impact sewer lines for them and their neighbors. She also noted that moving the entrance back to meet the 30' setback would put it into their bedroom.

Mr. LeMay stated that the sewer line looked like it went under the proposed location of the garage now and Ms. Olsen stated that it would be moved back. He then asked about the gravel driveway going up the Forest Street right-of-way and how it was arranged that it was a public right-of-way and it was also their private driveway. Ms. Olsen stated that it had always been the access to their property. Mr. Olsen asked if Mr. LeMay could repeat his question and then responded that it came off Cutts Avenue and was the way they got down. Their actual driveway was really in front of the spot where they proposed to put the garage, as shown on the submitted drawing. The gravel coming down, which was now asphalt, was a part of Forest Street. They had to clear it as it was not maintained by the City.

Mr. Jousse commented that he had found it very helpful to have stakes placed where the garage would be. When he visited a property and saw markers in the ground, at least he could visualize the size and he recommended to the Planning Department that they encourage future applicants to do so. Mr. LeMay added that he appreciated their precise and to-the-point application in terms of what the Board had to consider.

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

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

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

Mr. Grasso stated that the applicant was there to add a garage and a room between the garage and the house. This all faces a paper street which poses some problems as to what were defined as the front and side setbacks. He felt that the way the proposed changes were laid out, it would not be contrary to the public interest and they could approve it. The special condition resulting in a hardship was the way the house was situated on a paper street. With regard to alternative methods, he stated that, as the applicants had outlined, any other placement would not make sense and would also raise costs. They could put it way up in the corner but that would not be reasonably feasible. Mr. Grasso stated that granting the variances would be consistent with the spirit of the ordinance and, in the justice test, there would be no benefit to the public in denying the application. He could see no diminution in the value of surrounding properties as a result.

Mr. Durbin stated that he agreed, noting that there was no evidence that this paper street would be converted to actual use or any other purpose.

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

4) Case # 11-4

Petitioner: James Robertson/Gelmar Realty Associates

Property: 865 Islington Assessor Plan 172, Lot 11

Zoning district: Business

Requests: Special Exception Request

From Article II Section 10-208 Table 4 Use (34) to allow a veterinary clinic in the Business Zone and;

Variance Request:

From Article II Section 10-208 Table 4 Use (34) to allow a veterinary clinic in the Business Zone within 200' of a Residential district.

SPEAKING IN FAVOR OF THE PETITION

Mr. James Robertson stated that he had been a veterinarian in Manchester and Kittery for 11 years. There were a lot of complaints about the skyrocketing costs of veterinary medicine with one of the reasons being established hospitals with specialized equipment which raised costs. His plan was to

try and keep it simple and just provide basic preventative care and simple diagnostics, keeping costs low. He was concerned that, because of cost, animals were not getting the care they needed.

**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 petition as presented and advertised, which was seconded by Mr. Parrott.

Mr. Jousse recalled that they had granted within the last two years a variance for a veterinary hospital or acute care type of facility. With regard to the special exception, he stated that this operation would not present any hazard to the public or adjacent properties and no detriment to property values in the immediate vicinity. There was already vehicle traffic in the area and ample parking in the vicinity. They were not going to create noise or pollution or generate unsightly outdoor storage. The operation as described would not result in a traffic hazard or increased demand for municipal services. The building was existing and no increase in runoff onto the street could be anticipated.

Regarding the variance, Mr. Jousse stated that he didn't believe the proposed facility would be contrary to the public interest. The special condition of the property was that it was within 200' of a residential area, but in between this property and the residential area, there were a number of other businesses. It might be 200' "as the crow flies," but this property could not be seen from the residential area. He stated that there was no other means to pursue to obtain the sought benefit, granting the variance would be consistent with the spirit of the ordinance, and justice would be done by enabling a reasonable use of the property. Nothing had been presented as to the surrounding property values.

Mr. Parrott stated that he agreed, adding that this particular area was such an odd mix of businesses and industry and this type of clinic should fit in just fine.

Chairman LeBlanc commented that Islington Street was between this property and the residential area, although there were residences on the same side. When Mr. Parrott noted they were a ways down, he stated he then didn't see a problem.

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

5) Case # 11-5
Petitioner:Brady J Byrd/Brian L Neste
Property: 184 Walker Bungalow Road Assessor Plan 223, Lot 19
Zoning district:Single Residence B

Request: Variance Requests:

From Article III Section 10-302(A) to allow the following for a proposed 1½ story garage: a 16.1' front yard setback where 30' is required; a 4.1' rear yard setback where 30' is required; and 24.4 % lot coverage where 20% is required;

From Article III Section 10-302(A) to allow the following for a proposed 2nd story addition: a 13.4' front yard setback where 30' is required and a 20.8' rear yard setback where 30' is required;

From Article III Section 10-302(A) to allow for a proposed roof over an existing door with a 20'± front yard setback where 30' is required; and

From Article IV Section 10-401(A)(2)(c) to allow the expansion of a nonconforming structure

SPEAKING IN FAVOR OF THE PETITION

Mr. Bradford Byrd stated that they were essentially proposing to add bedrooms over the existing house. The house was situated on a triangular lot, which infringed on the setback most strongly at one corner of the house. 32% of the lot was paved over by a right-of-way by Walker Bungalow and Shaw Road. If that were added back, they would meet the front setback and coverage requirements. The garage would be added on the uphill side of house. They explored using that area and expanding the garage to hold another car, but it would cut into the area for a septic field so was not practical. Although the rear setback was 4.9' to the property line, there was over 100' to next dwelling structure. He felt it was in the spirit of the ordinance to remove a shed and adding a garage over existing paved area so they were not increasing the developed area of the lot.

In response to questions from Mr. Jousse, Mr. Byrd confirmed that the stand alone shed that was uphill was going to disappear and the second story would be added onto the existing footprint.

Mr. LeMay stated that he was confused as to the paved right of way and the reduced area of the lot and asked if Mr. Byrd could elaborate. Why was what appeared to be the property line going through the middle of the paved area?

Mr. Byrd stated that, when they originally paved Walker Bungalow, they basically split the distance of the road between the lots and then later they continued it through Shaw Road. Shaw Road used to dead end before their lot and it was continued through to Walker Bungalow and that was, once again, split down the middle so that half of the road was taken into their lot and half into the lot across the street. He confirmed for Mr. LeMay that there had not been a road there before, but a hairpin turn and this long extension tongue that went way down a couple of houses which was also part of their land in the triangle that was now completely paved over. He stated that it was a substantial hardship from a land area standpoint that so much of what was on the tax map was actually for them a paved public right-of-way. When Mr. Brian Neste stated that they weren't changing the current public use, Mr. LeMay stated that he understood that, but that this (a line he indicated on the plan) was through the Rockingham County Registry of Deeds and represented, for example, their deed. Mr. Byrd stated, "yes." Mr. LeMay continued that someone then came along and put pavement on their property without eminent domain. Mr. Byrd stated that he didn't really know the history, and hoped he was not being inaccurate, but apparently the neighbors agreed with the town that, if the town was going to pave it and plow it, they would cede their land to have the road paved. He clarified for Chairman LeBlanc that Walker Bungalow was public but Shaw Road was private.

Mr. Feldman stated that, with regard to the setback issue, they had researched the City Hall records and used their GIS system and everything they found suggested that, while the City was maintaining Walker Bungalow, it was unclear if that was a private or public way which he felt accounted for some of the difficulty. Mr. LeMay did not see the difficulty as they had a property line and had a setback from it. Mr. Grasso asked for clarification on the setbacks if the applicant's property did go to the center of Walker Bungalow Road and Mr. Feldman stated that was unclear. The ordinance stated that frontyard dimensions were to be measured from the street where a plan of the street was on file with the Rockingham County Registry of Deeds or in City records, or in the absence of such plan, from a line 25' from and parallel to the center line of the traveled roadway. He agreed with Mr. LeMay that the 25' line was also not on the diagram, but the plan was provided by a surveyor who did survey the property so that the information he provided was as accurate as could be found.

Mr. Joseph Onosko of 27 Shaw Road stated that he was the abutter to the back. While a 4.1' setback was indicated, it was actually more than 100' from the edge of his house to the addition and they had no problems with the proposed addition. As they could see on the plan, what they told the Board about the center of the road was the case. Mr. Paul Messier, across the street at 171 Walker Bungalow Road, stated he also had no issues with the proposal. He confirmed the lot lines do go through the middle of the road. Mr. Bryant Beach of 201 Walker Bungalow Road stated he had no issues with them doing this construction and thought it would look attractive.

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

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

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

Mr. Grasso stated that he saw no real public interest in this proposal and noted that a number of neighbors had spoken in support. The special conditions which would result in an unnecessary hardship if there were a literal enforcement of the ordinance included the facts that, as the applicants mentioned, 32% of their property was paved and they couldn't use the actual deeded property as a setback. The property lines ran down the middle of the road rendering some of the property not usable. With the property's unique shape, there was no other reasonably feasible method for the applicants to pursue. This was the only realistic location for the garage. Noting that all the neighbors supported the proposal, Mr. Grasso stated that granting the variances would be in the spirit of the ordinance, justice would be done and the value of surrounding properties would not be diminished.

Mr. Parrott noted that the hardship or oddity was the shape which probably should not have been created, but it was what it was. The important thing was that the expansion was a long ways from the adjacent house with plenty of room for light and air. They should approve the request.

Mr. Jousse stated that he would not support the motion. He had no problem with a vertical expansion or a roof over the entrance, but could not approve planting a garage 4.1' away from the property line. Right now, all the neighbors got along very well but the garage would be there in perpetuity.

The motion to grant the petition as presented and advertised failed to receive four positive votes with Messrs. Durbin, Jousse and LeMay voting against the motion. The motion failed and the petition was denied.

6) Case # 11-6

Petitioners: Jay McSharry/ Leonard Cushing

Property: 142-146 Cabot Street Assessor Plan 145, Lot 79

Zoning district: Apartment

Request: Variance Requests:

From Article III Section 10-302(A) Table 8 to allow for 4 units on a lot of 8,255 square feet where 14,000 square feet would be required; and

From Article IV Section 10-401(A)(2)(c) to allow the expansion of a nonconforming structure.

SPEAKING IN FAVOR OF THE PETITION

Mr. Brendan McNamara stated that he was the designer of the project, which was fairly self-explanatory. Historically, the property had been four units but it had lapsed into vacancy due to the financial difficulties of the previous owner. The applicants proposed to demolish the rear structure and rehabilitate the front, keeping it four units but expanding the size of the units. They had eliminated the setback issues which had existed and were not exceeding the lot coverage.

Mr. LeMay asked if the property was 3 units now and Mr. McNamara replied it was 4. The only issue was the fact that it had lapsed into vacancy. Mr. Feldman explained that the units had been vacant for more than 8 months, on a previously nonconforming property so the nonconformity had been lost. When Mr. LeMay asked if someone then had judged this was an abandonment of a use, Mr. Feldman confirmed that had taken place. The bank had possession for quite awhile and the units were vacant for a period longer than the 8 month period during which they could allow the continuance of a nonconformity.

Chairman LeBlanc asked if the yellow shaded area to the rear of the plot plan was the part which was being demolished and Mr. McNamara stated they were actually showing it two ways with two plot plans. On one, the yellow was shown as the expansion of the existing footprint and one shows the entirety of the new construction, where the rear has been demolished.

Mr. Jousse commented that demolishing the add-ons on top of add-ons was probably the best thing which could happen and Mr. McNamara confirmed that the rear portion was in bad shape, but they would try to retain the original front portion. In response to a questions from Mr. Parrott as to whether they proposed a side by side arrangement, two up and two down, he stated that the first floor would be split into two and the second the same except for access to what was the third floor

of the building. They were taking advantage of half of the original third floor. In response to further questions from Mr. Parrott, he stated that they had egress windows on the third floor and the entire building would be sprinklered so they were not required to have separate access to the third floors. Mr. Parrott asked if they were also considering conversion to more units, as the Board did not want to see additional growth. Mr. McNamara stated that, given the lot size, they were not seeking more. They just want to return to what had been previously grandfathered, while modernizing the property and bringing the structure up to code.

Mr. Charles Case stated that he was the co-owner of a condominium next door at 158 Cabot Street and it sounded to him and his wife that it would be a great improvement.

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

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

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

Mr. Parrott stated that granting the variance would not be contrary to the public interest. The use was well established in the area and would only look better. It would fit right into the neighborhood and not overburden the lot. Regarding a hardship inherent in the property, the issue was lot coverage and the lot was what it was and was already well established as a four unit. This change would not result in over-intensification. He stated that there was no other reasonably feasible method to return to the previous 4 units as they were limited by the size of the lot. It was in the spirit of the ordinance to encourage the upgrading of an existing property which would only benefit the neighborhood. In the justice balance test, there was no overriding public interest to argue against approval. The surrounding property values would, if anything, be enhanced by the upgrading of the property and he felt the request met the tests to grant the variances.

Mr. LeMay agreed, noting that this was a small amount of relief requested for an ambitious project.

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

7) Case # 11-7

Petitioner: Nancy Bogenberger

Property: 953 State Street Assessor Plan 156, Lot 15

Zoning district: Apartment

Request: Variance Requests:

From Article XII Section 10-1201(A)(3)(a)(3) to allow required off street parking spaces to maneuver from said parking space without requiring the moving of any other vehicles or the passing over any other parking space.

From Article XII Section 10-1201(A)(3)(a)(4) to allow vehicles parked on a residential parcel with more than two units to back out onto a street where only forward maneuvering is allowed.

SPEAKING IN FAVOR OF THE PETITION

Ms. Nancy Bogenberger identified herself as the owner of the property and stated that her property manager would speak on her behalf.

Mr. Peter Lamandia stated that, if they looked at the parking area from the property line over to the fence, there was no curb that they would have to take out and there currently were 5 parking spaces there plus the 2 in the garage for a total of 7 spaces. It had been like that since Betty Hill moved the house there. In response to questions from Chairman LeBlanc and Mr. LeMay, he stated that there were four units but only three occupied. With 7 spaces, they have spaces for 4 units, at one and a half per unit. He stated that they had considered configurations to eliminate backing out, but they would present a financial burden. They would have to tear down the garage and pave most of the yard. When Mr. LeMay asked if what he showed in the drawing was already what was being done there for parking, Mr. Lamandia stated that one drawing showed the existing plan and one the proposed. Mr. LeMay commented that he was just squaring off the parking a little and Mr. Lamandia confirmed that was correct and it would give them one more space.

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

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

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

Mr. Durbin stated that the public interest obviously was in being able to snowplow and maintain the road in that area but they were already faced with a situation where there were parking spaces that essentially backed out onto the street. Special conditions exist such that literal enforcement of the ordinance resulted in unnecessary hardship. In this situation, they were basically squaring off this parking space that was somewhat odd shaped to allow for one other parking space, essentially one more space backing out onto Columbia Street. The special condition was the fact that they do have to back out already and they would continue to back out. It didn't seem reasonably feasible to change the parking pattern there without incurring substantial economic hardship and having to actually replace structures and potentially pave off part of the lawn and probably come back to the Board. He stated that granting the variance would be consistent with the spirit of the ordinance. In the justice balancing test, he stated that the hardship on the applicant if the petition were denied outweighed any possible benefit to the public. No evidence had been presented to suggest that there would be a diminution in the value of surrounding properties.

Mr. Grasso stated that he had seconded for discussion and would not support the motion. He couldn't get around how the two vehicles in the garage would get out without everyone in the house having to move the parked cars. The spirit of ordinance would be to not have people back onto

street and this was contrary to that intent. He also felt there was some public interest as far as city snowplowing. These would be fairly close to the street as well.

Mr. Parrott stated that he had two concerns, the over-intensification of the lot and the, at best, awkward arrangement for the parking in the garage and the additional parking. It didn't seem to work and he felt a little skilled engineering could lead to a better arrangement, as referenced in the departmental memorandum. It was important to have a good plan with a small lot and this was not a good solution. It would make things worse.

Mr. Jousse stated that he also would not support the motion. The stacked parking just did not add up and they were backing onto a fairly congested street, which was a throughway. When he had visited the property the day before, there was quite a bit of traffic and backing onto the street was really not a safe thing to do, particularly during commuting time.

The motion to grant the petition as presented and advertised failed to pass by a vote of 1 to 5, with Messrs. Grasso, Jousse, LeBlanc, LeMay and Parrott voting against the motion.

8) Case # 11-8

Petitioners: Sureya M.Ennabe Liv Trust/C.N. Brown

Property: 800 Lafayette Road Assessor Plan 244, Lot 5

Zoning district: General Business

Requests: Special Exception of Article II Section 10-208 Table 4(36) Motor vehicle service stations and Convenience Goods I & II as accessory uses

Variances:

From Article III Section 10-301(A)(7)(a) to allow a tidal wetland setback of 50' where 100' is required;

From Article III Section 10-301(A)(8) to allow a 30' front yard setback for the Pump Island canopy where a special setback of 105' is required along Lafayette Road;

From Article III Section 10-304(A) Table 10 to allow the following setbacks to occur in relation to the canopy structure: a right sideyard setback of 26' where 30' is required; a left sideyard setback of 23' where 30' is required; and a frontyard setback of 30' where 70' is required.

SPEAKING IN FAVOR OF THE PETITION

Attorney Peter Loughlin, stating that he was appearing on behalf of the petitioner, passed out some photographs and plans. Also there was Tom Saucier of SYT Design and Kevin Moore of C. N. Brown. He stated that the history of the lot was important. As indicated in the provided materials, at one time the property was owned by a family operating an automobile dealership. In 1959, they sold the land from the Sunoco station down to past Dunkin Donuts to the Pic-n-Pay. It was relevant, first from a vesting standpoint and for the historical perspective. He stated that Exhibit 3 showed the 4 acres that Pic-n-Pay had which was all that land in back now owned by the State of New Hampshire as a mitigation site. Pic-n-Pay purchased that land to develop and applied to fill that land and a Supreme Court decision was rendered after a fill permit was denied by the Port

Authority who had the jurisdiction at the time. Reading from the court decision and noting that this was forty years ago and light years in terms of environmental values, Attorney Loughlin stated that the decision would have found filling the marsh perfectly acceptable.

Pic-n-Pay never got around to filling it in, although some adjacent areas had some fill added. In 1964, the property was acquired by a local attorney who built a 4-bay car wash. Attorney Loughlin stated that the importance of the history and that development was that, during the 60's, the entire site was not only filled in and developed but paved and he included in the materials just handed out a photograph from 1978 where they could see that the pavement existed right back to the rear property line and included access to one of the bays along the rear property line. Also provided was a topographical plan of aerial photos taken in 1994 on which the pavement was indicated by a dotted line. He stated that, if they went to the site that day, it seemed to be grass and vegetation, but that was on top of pavement. The land had been disturbed and paved for over 40 years.

Attorney Loughlin referenced the departmental memorandum which further listed some of the history of the property. Until 2006, it was a gas station and store, which was closed for lack of a tenant, although C. N. Brown had attempted to rent it. His belief was that, because there was no intent to abandon, there were certain vested rights that existed and he did not want to waive them. He introduced some recent photographs showing the property, which was not in good shape. He suggested that this proposal was an example of the planning process working. He detailed the process since the development of a plan in January of 2008 to maintain traditional uses existing for 30 years and re-energize the site with a convenience store and car wash, retaining the circulation on the site as it had been. After meeting with Ms. Tillman and Mr. Britz, their team had adopted the Planning Department recommendations and revised their plans, drastically reducing the scope of the project and making it more environmentally sensitive. The car wash and vacuums were eliminated and all of the pavement behind the existing building was removed. He noted that part of the existing building was 40' from the rear property line and the proposed building would be 50'. There would be no pavement or structures within the 50' outlined by the comprehensive shoreline act. Attorney Loughlin stated that this was one of the few proposals that would come before the Board where the proposal contained significantly less pavement than existed on the site for 30 years. At least 3,000 s.f. of impervious material would be pulled and replaced with vegetation.

Attorney Loughlin stated that, while they were making these significant improvements, under present requirements they need relief from the setback requirements. First was tidal wetland setback. The tideline was shown on the plans and while there were no structures for 50' from the property line, they were still within 100' of the tidal wetlands. Secondly, relief was needed for the front setback for the gas canopy, which presently was 15' from the right-of-way as shown pretty graphically in one of the pictures. Attorney Loughlin noted that other canopies along the road were pretty close to the lot line and, while the distance from the front lot line will be doubled, relief was still needed because of the special setback on Lafayette Road. They still needed relief, but it was a significantly improved situation. They also needed side setback relief as the proposed canopy was within the 30' side setbacks, although not significantly. Unique to the property to the south was a 50' right-of-way which had been intended as a thoroughfare to the supermarket and which was the marsh. That right-of-way was only used by this property so the purpose of spacing for the setbacks was not an issue due to that extra 50'.

Attorney Loughlin stated that gas stations and convenience stores were only allowed in the district by Special Exception. He read the criteria for granting a special exception, stating that each one

was not an issue. Regarding generation of traffic, he stated that they were actually reducing the uses so that traffic should be reduced. The demand for municipal services would not be increased as the only item which might have created a demand was the car wash and that had been eliminated. Storm water runoff would be reduced by the removal of impervious material and the installation of vegetative material. He indicated the proposed canopy and convenience store on the displayed exhibit, noting that the store met all the setbacks and pointing out the amount of green on the proposed plan compared to the aerial showing the current situation.

Addressing the criteria for granting a variance, Attorney Loughlin stated that this would improve the area and help drainage, actually promoting the public good. In the justice balancing test, denial of the variances would not promote anything good for the City but would deprive the landowners of a reasonable use of the property consistent with a use in place for many years. He stated that granting the variances would not be contrary to the spirit and intent of the ordinance. The reason for the tidal setback was to protect resources. While they were within 100', they were moving from within 10' of the salt marsh to 50' or 60' so the spirit of the ordinance was maintained. It was also maintained for the front and side setbacks by moving the existing canopy back and because of the existing uses with the neighboring service station to the north and Dunkin Donuts to the south. There was no problem with spacing or impact on surrounding properties so the intent of the ordinance was served.

Attorney Loughlin stated that the hardship in the property was that the lot existed before the 200' frontage requirement was established. When originally developed a 150' lot was considered more than adequate but the whole concept of how we fuel our cars has changed and convenience stores with gasoline facilities were the norm today. He stated he could remember when a canopy was first proposed over a pump and now the use had evolved to the point where you wouldn't use a station in any kind of drizzle without one. He described the location of the proposed pumps, noting that they were barely encroaching to the side. He stated that the special conditions of the property were its shape, size and the 50' right-of-way. Considering whether another reasonably feasible method was available, he stated that in order to upgrade the property in a fairly modest manner, there was no better way. They've already eliminated the car wash and the vacuums and were back to a basic convenience store/fuel facility. Replying to a question from Chairman LeBlanc he confirmed that the only motor vehicle service component would be the pumps. There would be no bay for repairing vehicles.

SPEAKING IN OPPOSITION TO THE PETITION

No one rose to speak.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Mr. Paul Kenney stated that he owned the Sunoco station and had no objection, but asked that they be granted the same consideration when they came in to redo their station.

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 he was sympathetic to the grandfathered rights and felt this was a reasonable request.

Mr. LeMay noted that a Special Exception was required for a filling station in this zone and addressed the criteria. Constructed to code as described, there would be no hazard to the public or adjacent property on account of fire, explosion or release of toxic materials. There would be no change in the essential characteristics of the neighborhood. The location had been a gas station forever and there was another station next door. He did not see any change in the impact on traffic and no particular change in the demand for municipal services. It appeared that this plan would improve over what was there in terms of runoff and he felt that the requirements for granting a Special Exception had been met.

With regard to the variance criteria, Mr. LeMay stated that upgrading the property and improving the front setback for the canopy should help property values in the area. He felt that improving the setbacks and eliminating some of the pavement would help the environmental situation and be in the public interest. In the justice test, he felt there were some grandfathered rights for a use as a filling station. It would meet the spirit and intent of the ordinance to preserve the environment and provide services in a safe way to the public. A hardship did exist due to special conditions of the property, which included a 50’ right-of-way and the history of the property with that use. He was pleased to see that the applicants had eliminated the car wash.

Mr. Parrott stated that this was a tired looking property which did nothing for the neighborhood in this condition. It would be in the public interest to upgrade the appearance and bring it up to code. It was logical to continue a well established and limited use which was compatible with the area. A variance was needed as a reflection of the passage of time and changes in the ordinance and he felt it met the tests to grant the request.

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

9) Case # 11-9
 Petitioner: 355 Pleasant Street LLC
 Property: 355 Pleasant Street Assessor Plan 103, Lot 64
 Zoning district: General Residence B
 Request: Variance Request
 From Article III Section 10-302(A) Table 8 to allow a two family unit to be constructed in the GRB zone on a lot with 9,245 square feet of area where 10,000 square feet is required.

SPEAKING IN FAVOR OF THE PETITION

Attorney Thomas Watson stated he was appearing on behalf of the applicant and was here with the applicant, Katherine Williams Kane, and Anne Whitney, the architect. He stated that 355 Pleasant Street was an undeveloped lot of 9,245 s.f. in the General Residence B district. The applicant proposed to build a 2 family home and, while zoning allowed for more than 2 units, 5,000 s.f. of lot area per unit were required. He noted that the 755 s.f., the amount under the required lot area,

represented 7.5% of that standard. To demonstrate how the proposal was consistent with the intent of ordinance, Attorney Watson noted that, if they were asking for the same percentage difference from a 10' setback, it would represent 9". In his opinion, this variance request was equally minimal. The property was nice and square so there was a nice envelope in which a fairly large structure could be built without asking for any setback variances.

Attorney Watson stated that, historically, this property was smaller until earlier this year. The departmental memorandum somewhat misstated that the property was being carved out of a mother lot. Actually there were 3 lots reconfigured into 2 lots and, in the submitted materials, plan with the yellow highlighting showed the lot in question as well as a black line, which was the tax map line formerly representing the three lots. If they combined all three lots into a single lot, it would be 15,800 s.f. which would allow for three units. They were asking for two on this lot and the other, separately owned, would become a single family property. The brick house formerly contained 5 or 6 apartments or was a rooming house with 11 staff members or nurses. What was being proposed was a less intense use.

Attorney Watson stated they had also submitted a plan which showed color coding on the lots giving a sense of the area which had a fairly dense development pattern. The zoning allowed for multi-use dwellings and there were 16 in the vicinity which did not meet the standard of 5,000 s.f. per unit. This number did not include the Wentworth and Portsmouth Housing which were even more intensive. Since their submittal, they had done some homework to give an even better perspective and he submitted a copy of the tax map which went even further to identify those lots. Virtually the entire neighborhood, highlighted in yellow, did not meet the 5,000 s.f. per unit standard. He stated this was significant because one of the primary reasons for zoning was consistency and it was consistent in this neighborhood that 90% of the lots did not meet the standard. He noted that it was a telling statistic that this lot could be built out to the entire setback envelope and still satisfy the 30' lot coverage requirement with 6,470 s.f. of open space. The lot was twice the size of lots which had homes on them. If the intent was to avoid overcrowding, then nothing in the proposal was going to run contrary, which brought them to the criteria for a variance which he stated would fall under the Boccia analysis.

First addressing no diminution in the value of surrounding properties, Attorney Watson stated that in order for that to occur, there had to be some adverse impact which could not be the fact that this might be developed as two units. The issue was whether having the two units with 7.5% relief requested would have any impact. He noted that the neighborhood was all substandard and all the setbacks were so there would not be a lot of impact on neighbors, no shadows on neighboring properties. With respect to the property to the rear, the existence of a sewer easement prevented development so there would be no crowding or safety issues with the easement serving as a natural buffer for at least one of the two properties most impacted. Again, the proposed use was compatible with the neighborhood as well as the per-square-footage, even with a variance. Attorney Watson stated that Miss Kane, an experienced real estate person, was there to speak to their contention of no diminution in surrounding property values if the Board wished.

With regard to the public interest, this was best demonstrated by the language of the ordinance. The intent as it affected this area was to avoid undue concentration. A lot of this size could accommodate two units while promoting adequate light and air and without infringing into the setbacks. Attorney Watson reiterated that there was no suggestion of adverse impact. Part of the public interest was the promotion of the best and most appropriate use of the land and that led into

the third requirement, which was that granting the variance would be consistent with the spirit of the ordinance. He stated that the Portsmouth Ordinance was unique with so many different districts and overlays. He believed that was because the Portsmouth Zoning Ordinance was designed to recognize and promote the historic uses and designs in particular geographic areas and he gave some examples of districts and their characteristics. When they looked at the design and pattern for the district in this area, a shortfall of 755 s.f. was little enough that the property would stay within the spirit of the ordinance.

Addressing the fourth requirement, Attorney Watson stated they had to show there were special conditions with respect to the property such that a literal enforcement resulted in unnecessary hardship. The first standard under the Boccia analysis was that a variance was needed to enable the proposed use given the special conditions of the property and the second that the benefit sought could not be achieved by some other reasonably feasible method. With respect to the first, although the proposed use was allowed, a variance was absolutely required in order to put two units in there. He stated that the Boccia case itself was similar where the Supreme Court had held that a variance was appropriate. Regarding the second criteria, there was nothing else they could do. This was a lot with 9,245 s.f. and they couldn't make it grow or change dimensions in some way. In the substantial justice test, only 7.5% relief was necessary, which was a minimum variation from the standards for a permitted use and would not result in overcrowding. Given the unique nature of the property, this was the only justifiable outcome.

Attorney Watson stated that he would like to address the departmental memorandum which suggested a couple of things which, in his opinion, were not justified. First, that the lot was carved out of a mother lot and, once the decision was made to do that, the fact that the line was drawn in one place, 755 s.f. short, must have been intended by the subdivider as wanting to have a single family residence on this particular lot and a single family residence on another. He had looked at the records and didn't feel there was anything which would substantiate that idea and he felt it was speculative. He felt it equally likely that, when the prior owners subdivided this, and he emphasized this was not done by his client, they decided that they would draw a line, which he indicated on the plan, so that a purchaser wouldn't have to think they would have to get a variance to build anything. The particular location of the line could have just as easily been determined with respect to the amount of frontage required and not the square footage of the lot. He stated that if the lot line were moved to another location, as the departmental memorandum suggested, there would have been other issues with frontage and things of that nature. Even if the owners were there to say what their thinking was, the fact was that the subdivision was approved by the Planning Board with no conditions saying one lot or the other had to be used for a single family residence. In the absence of that, he didn't feel there could be a presumption that the location of the lot line intended to signify that it was to remain a single residence lot.

Attorney Watson continued that the memorandum suggested that the applicant could simply go back to the Planning Board and ask for a lot line adjustment, taking from the lot next door and adding to this lot. The problem was that the lots were owned separately. Ms. Kane does have an interest in the companies that own the lots but each is separately owned with separate mortgage obligations. Should she go back and ask the Planning Board to approve another lot line adjustment, there would be the cost of having to go back and reapply and have the bank do a reappraisal and reevaluate previous mortgages. This was an onerous thing to do which, under Boccia, did not meet the criteria. Attorney Watson stated also that the intent of the ordinance was to create some level of conformity. If they looked at the neighborhood, the only consistency was that almost every lot was

nonconforming. If they were to go through the whole reappraisal and refinancing process to relocate the lot line, then the lot next door would require coming in to ask for variances which would be to a greater degree than 7.5%. He referred to an approval earlier that evening for a property on Cabot Street which had a 40% deviation off the standard. This request was a lot smaller, for a larger lot and he felt there should be consistency in the interpretation of the ordinance.

Mr. Jousse stated that he was trying to see how they got there in the first place. It was easy to say this company owns this and that company owns that, but the same person owned both companies. Three lots were split and he was trying to understand why this lot had not been created to make 10,000 s.f. Attorney Watson stated that was exactly his point. The property had been owned by the Wentworth Home so they could only speculate. He confirmed that the applicant had only owned the property for 2 to 3 months. The property acquired next door was for the applicant's home. Mr. Jousse asked why, if someone was familiar with the real estate business, they did not get a variance prior to purchasing the property. Attorney Watson responded that, in this case, the property was sold at auction as an absolute sale and there was no opportunity to put a contingency on the offer. The implication was, why did she buy if she wasn't sure she could put in a two family. He stated that the Harrington case hit it right on the head. If someone acquired a property with zoning in effect with restrictions, they could still apply for a variance if the request was a reasonable one. That was what variances were for.

Chairman LeBlanc stated that he was having difficulty with two units on this property and noted that there were many lots in the area that were single family and there were few that were multi family. Referring to the Cabot Street decision, he stated this was an established property with 4 units on it. He had a real problem with the fact that this lot had nothing on it and they were asking for two units. Attorney Watson stated that, traditionally, this lot was not developed, although it was always a developable lot. In fact, if there hadn't been a lot line revision, this Board might have been entertaining two applications for two lots separate from the one that had the brick structure on it. The City a long time ago decided that this was an appropriate district in which to have multi-units and they had, in fact, identified at least 16 other lots where there were multiple units. This was exactly what was envisioned by the ordinance but a tad off. This was not 4 units which would be outside the spirit of the ordinance and beyond what substantial justice would require. That was why it was so important to recognize that they were seeking a minimal deviation of less than 10%

Mr. Parrott stated that he wanted to make sure he was looking at the marked up plan correctly. The lot under discussion was encircled by Pleasant, Howard, and Manning Streets and, if he understood it correctly, there were no multi-family structures on that block. Attorney Watson confirmed that he was correct. Mr. Parrott continued that in the next block encircled by Washington, Gate Street and Manning there were 15 or 16 lots with one multi-family and in that encircled by Manning, Gates and Meeting House Hill, there were none. Those were the nearest blocks and the applicant's attorney was saying there were many houses in the area which were multi-family, but that was not what the map showed, or was he misreading it. Attorney Watson responded that he was not misreading it, but he thought he was drawing an artificially narrow line. To take this tiny little block and say this was the block that was going to be the standard to make a comparison ignored the fact that all the others that he indicated were within the same zoning district. Mr. Parrott stated that he did not see the value of the argument which was being made that multi-families were typical of the immediate area when they were not. Attorney Watson stated that, if they looked at the tax map included with the original application, they would see the zoning district with this property in the middle. In that

area, there were a number of multi-families, not to mention Wentworth, which had many multiple units. He pointed out some additional multi-family lots.

Ms. Anne Whitney stated that she was the architect who had created the map. What she was doing was to show where two-family units as an allowed use did occur and the sizes of the lots. She wasn't saying the whole district was full of them as it was primarily a single family district but, within this neighborhood of General Residence B, these were the units that were more than one family and this was the square footage that they had. In reality, their lot had significantly more square footage for a proposed two-family dwelling than most of the two-family dwellings. Mr. Parrott interrupted to state that was not the argument he was hearing. Ms. Whitney stated that was what she was trying to present was that, when you get up to two-family dwellings, it was fairly common for them to be on less than 10,000 s.f. Mr. Parrott reiterated that was a different argument and Attorney Watson stated that his point was that this was a zone that allowed for multi-families. It was not like they were over on Alder Street and he was trying to convince them that they needed to have an apartment house there.

SPEAKING IN OPPOSITION TO THE PETITION

Lee and Rodney Roberts stated that they were the owners of Lot 103-61, behind the property on Howard Street. Ms. Roberts referred to a question from Mr. Jousse and stated that probably the Wentworth House Board had considered that someone might have wanted to put in a two-family and that was why they agreed to the lot division. She felt it was also interesting that, when she had met Kathy Kane, she had said she would be next door in a single family house on the lot they were discussing that evening. She felt that Ms. Kane did not realize the brick house property would not be allowed to divide into a two family as that lot only had some 6,000 s.f. Addressing the criteria, she stated that granting the variance would be contrary to the public interest. They felt they had a single-family historic neighborhood with many of the lots predating the ordinance and not many duplexes in the area. She disagreed that there was any hardship and felt the applicant could build a single family home and use the other brick house as a single family home. She felt the applicant planned to rent the two family, so there would be additional vehicles and a situation with an absentee landlady, setting a precedent. Ms. Roberts stated that she felt the applicant would have been aware of the special conditions and the numbers when she bought the property. She and her husband would prefer two single family homes as renters don't join as well into the community and neighborhood, in her opinion. In the justice test, she stated that the balance was not equal. The applicant was benefiting and the neighbors were not. They were concerned about a two family rental diminishing the value of their home. The previous rental, with an absentee owner, had been in terrible shape. She asked the Board to consider their views and the negative impact.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Ms. Katherine Williams Kane stated that she had only intended to buy the brick house, but the way Mr. Shanley structured the auction, the only way she could get it was to purchase both. The Roberts' were correct in that she had originally planned to convert the brick house into a two unit and it was not zoning or other issues, but her architect who convinced her otherwise. Once they started looking at plans for the brick house, her architect felt it would be more site driven and logical to have the duplex on the empty lot. Ms. Williams Kane stated that she had asked Mr. Shanley about the zoning per unit and he told her exactly what it was, 5,000 s.f. per unit under the zoning laws but that she could apply for a variance given where it was and if her expectations were

reasonable. She wanted to reassure the Board that she planned on spending the rest of her life in the brick house and was not trying to sell condominiums, but was looking for two units on this lot with quite type tenants, maybe “empty nesters.” Whatever she put there would be most visible to her property and she didn’t want problem tenants. She stated that she was sincerely vested in what happened to both properties.

Attorney Watson stated that he understood the concerns of the Roberts, that this would change their neighborhood as this had been an empty lot. With respect to the points they raised, first, that there would be a duplex and, second, there would be renters, the City had already decided that having renters was o.k. and a multi-unit was allowed. If those were the two concerns on which their arguments were based then, while they might be legitimate concerns for them as living in the neighborhood, they were not legitimate for the Board.

Ms. Roberts stated that they were important concerns to them and she had talked about hardship. The fact that this would not be typical of the neighborhood and the aesthetics should count for something too.

DECISION OF THE BOARD

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

Mr. Grasso stated that this property was in a part of town where two units were allowed although the area was mostly single family. This was a recently created lot which was close to the 10,000 s.f. on which they would be allowed to build. He stated that the public interest would not really be affected by granting the variance. This was a neighborhood, historic in nature, where the houses were close together and a situation would not be created which would make the area worse. The special conditions resulting in a hardship were basically the size of the lot which, he noted, also had an easement. 5,000 s.f. was required per unit and this slightly below and the use was allowed in the district. There was no other method that could be reasonably pursued. While they could re-design the lot line again, that could create problems with taking away frontage from the other lot. He stated that it would be in the spirit of the ordinance to allow two units in this district and he felt there was plenty of space for light and air. Justice would be done and he didn’t feel that the value of surrounding properties would be diminished.

Mr. Durbin stated that, while he had seconded for discussion, he didn’t agree with the maker of the motion. He felt the public interest was to promote conformity with the ordinance not with the nonconformity in the district. He didn’t see any special conditions which would warrant two dwelling units on that lot and there was a reasonably feasible alternative which was a single family home. He stated that it was in the spirit of the ordinance to maintain conformity with the ordinance and the square footage per unit requirement. He felt the justice balance test tended to balance in favor of the conformity with the ordinance. He did, however, take issue with the abutters’ statements regarding renters, of which he was one, and he felt he was a contributor to the community.

Mr. Jousse stated that he would support the motion. The applicant happened to own both properties and, if she was determined to have a two-family on the right, all she had to do was move the lot line and it would be feasible for her to do this. He didn’t think, however, that it would be to

everybody's benefit to force her to go through all those hoops just to build a two family while a variance could accomplish the same without further hassles.

Mr. Parrott stated that, for him, it came down to their obligation to find hardship inherent in the land, not in someone's personal situation, to support a variance and he couldn't find a shred in a recently created lot which was perfectly legal for a single family house. It was not as though they were taking something away from someone. It was a blank lot and perfectly legal as it stood. The remedy would be to adjust the lot line and there was a mechanism to do that. If the applicant felt strongly about a duplex, you would think they would want it on a legal lot. It might involve some financial expenditure but that was not the concern of the Board. The balance test also did not favor the applicant.

The motion to grant the petition as presented and advertised failed to pass by a vote of 2 to 4, with Messrs. Durbin, LeBlanc, LeMay and Parrott voting against the motion.

V. ADJOURNMENT

It was moved, seconded and passed by unanimous voice vote to adjourn the meeting at 10:10 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary