

Town of Oriental
Board of Adjustment Meeting
September 11, 2015

The Town of Oriental Board of Adjustment held a meeting on September 11, 2015 at 9:04 AM at Town Hall.

Chairman Valinoti noted that the meeting had been properly noticed and called it to order. He noted that no decision was required to be made today. He stated that the applicant will present his case, interested parties will be permitted to speak, but that those individuals should wait to be recognized by the Chair prior to speaking. The Applicant may call witnesses and ask witnesses questions. After the Applicant presents, interested parties may testify or ask questions. Because the meeting is being recorded, the Chair requested that anyone who speaks state their name and address for the record. He also noted that Commissioner White, who is present, cannot testify. This has been a question before and the attorney agreed that the Board member may not testify due to the fact that the Board appoints the Board of Adjustment.

Town Clerk Diane Miller took roll call, determined a quorum was present and Chairman Valinoti proceeded with the meeting.

PRESENT: Chairman Valinoti, Vice Chair Carmichael, Members Khouri, Small, Olson, and Town Clerk Miller

ABSENT: Members Marlowe (recused due to surveying the property), Johnson (Vacant position due to Member filling in as interim Mayor.)

The Board said the Pledge of Allegiance.

Chairman Valinoti asked for any correction to the August 7, 2015 Minutes, which were from the Annual Organizational Meeting. Meeting minutes were approved with MOTION by Member Khouri, Second by Member Small. 5-0. No changes from the August 7, 2015 meeting and will be available for signature immediately following the meeting.

Chairman Valinoti asks for a Motion to open the Public Hearing on Variance Request 2015-39 from the Town Manager's decision not to allow the ability to build inside the front yard setback in an R-1 District, under GMO Article V, Section II, Subsection 41. MOTION by Member Olson, Second by Member Khouri. 5-0. There was some discussion about the application number and the number assigned was the Compliance Request number. Chairman Valinoti requests that the Variance application be renumbered to 2015-1.

Chairman Valinoti then asked if any member of the Board has a financial interest in this application. No Board member has any financial interest in this application. The package as presented was emailed to the Board. Mr. DeChesere has produced packages to support his case.

Chairman Valinoti notes that letters the Land Use Administrator receives relating to the Variance request are not acceptable as testimony because it cannot be challenged, so letters received did not go to the Board for review. If anyone wanted to object, they have to be here in person.

Chairman Valinoti commended the Applicant for his composition of his case. He asks the Clerk if the application needs to be read into the record. The Clerk advises that everyone who wants to see it has, and that we could simply append the application to the Minutes. The Chair asks if there is another copy to circulate, in case someone in the audience has not seen the complete package. Clerk indicates she has an additional copy and hands it to the closest audience member for circulation, and that Mr. DeChesere has circulated his application to his neighbors in advance.

Member Carmichael has some confusion in the referenced documents. Mr. DeChesere asks to explain. The letter dated August 13, in question is to be used as reference for Mr. DeChesere's presentation. Mr. DeChesere states that he intends to connect the letter referenced during his presentation. Member Olson requests that the cover to the package forwarded to the Board be read into the record.

We, Jay DeChesere and Heather Smith, do hereby petition the Board of Adjustment for a Variance from the literal interpretation of the Growth Management Ordinance because, under the interpretation given to us by the Town Manager, serving in her capacity as Zoning Official, we are prohibited from using the parcel of land described in the attached form(s) in a manner shown by the plot plan attached to that form. We are specifically requesting a Variance from the following provisions of the ordinance -GMO Article V, Section 72 (4) Building setbacks, particularly setbacks in the R1 zone, which require a 30 ft front yard setback from the public right-of-way.

Chairman Valinoti deems the application complete and signed by the Applicant, proper notice of the hearing having been served by the Land Use Administrator. In addition, signs were erected on the property twice, and have been removed during the process of notification. One of the signs was returned to Town Hall shortly before the meeting. Chairman Valinoti asks if surrounding property owners were properly notified. Clerk Miller confirms that they had. All property owners required to be notified were notified by service of first class US Mail in the proper time frame. All property owners adjacent and across the street from the property in question were notified. Chairman Valinoti states that in the past notification has been made by certified mail. At this point in the hearing, we will stop and wait for the attorney to arrive. The Clerk notes Article XIII section 201 of the GMO- notice of a hearing: notice shall be given to neighboring property owners by mailing that notice not less than 10 days prior to hearing. Notice was also published in the local paper compliant with regulations.

Attorney M. Scott Davis arrived. Chairman Valinoti asks the attorney if the service of notice was adequate. Chairman Valinoti determines that proper notice has been made in accordance with the GMO, and so the Board of Adjustment does have jurisdiction over the request.

Chairman Valinoti swears in Mr. Jay DeChesere to present his case.

Mr. DeChesere describes the packages prepared for Board members and neighbors outlining his request. He introduces himself, occupation, mailing address. Chairman Valinoti asks Mr. DeChesere if he does indeed own the property. Mr. DeChesere states that he does. States that he wanted to be one step back off the river. Once the property was purchased, Mr. Marlowe surveyed the property. He designed the home and pretty quickly decided that he could not fit the home properly on the lot without removing the tree in order to keep the home design appropriate to the old neighborhood. After conversation with Bob Miller [Oriental Tree Board Chair and PhD Arborist], Mr. DeChesere was informed that he should be building at least 15 ft from the tree to preserve the root structure in order for the tree to survive.

Chairman Valinoti asks the attorney if the letter from Bob Miller is acceptable since he cannot be at the hearing. Scott Davis indicates that the Manager can read it into the record and the Board may give it whatever weight in their decision they feel is appropriate. Bob Miller referenced the Tree Ordinance. Mr. DeChesere also has an opinion from an Arborist from the City of Wilmington who shares a similar opinion.

Mr. DeChesere continues with choice to cut down tree, which would enhance his view and allow him to use the setbacks as they are. The GMO also holds an Ordinance where the setbacks can be adjusted for the harmony of the neighborhood. Alignment with the Mays/Johnson home and potential new home on the corner would allow him to move the setback forward. He indicates that he thought he didn't want to have his first dealing with the Town to be requesting a variance from regulations, but that he was doing so in order to save the tree.

Mr. DeChesere contacted neighbors- not as he imagined- most owners are absent, and only in town occasionally. He indicates he has letters from neighbors who state no objection to his request.

Chairman Valinoti asks if he has any additional professionals or witnesses who he would like to call. Mr. DeChesere states all he has is letters from neighbors who are not opposed. Chairman Valinoti asks if there is anyone in the audience who would like to make a statement.

Ms. Mary Duffie says that she would. Chairman Valinoti swears in Ms. Duffie. The Clerk asks that Ms. Duffie be allowed to move closer to the microphones as she speaks very softly and we would like to capture her testimony as a whole.

Ms. Duffie states that she has no objections to Mr. DeChesere's request as the setbacks have changed. She said that they built right up to the setbacks of the time at 15 feet so that they would not lose their view of the river. At the time, her husband looked at other properties, and there was only one house built to a 30 ft setback, so what they are asking is not really that unusual. She says she is all for saving the tree, and that the design looks like it's only the porch that will invade the setback. She asks that the Board grant the Variance.

Chairman Valinoti asks if anyone in the audience would like to question the applicant or his witness. Mr. DeChesere states that he has another witness and Chairman Valinoti says he needs to swear in that witness.

Mr. Danny Sharpe at 205 High St [directly across the street from the DeChesere property] is sworn in. Also owns 309 High St. Was a long time resident, now lives elsewhere and visits occasionally. Mr. Sharpe states that he came to speak in favor of the Variance, thinks they make a great argument and loves the idea that they want to save the tree. He has sought to plant additional trees on their property planted by the Tree Board. Strongly in favor of the request. His property is 20 ft away, with steps, his property is at 17 ft. Chairman Valinoti thanks Mr. Sharpe and asks if there is anyone who has questions of the applicant or his witnesses. There are no questions from the audience.

An additional audience member would like to make a statement. Chairman Valinoti swears in Mr. Johnson, 901 South Ave. Mr. Johnson recently purchased the adjacent property. He has reviewed the documents and finds no basis for it to be granted. Analysis of the submitted site plan indicates that within the R-1 setbacks, after deducting for trees, over 3600 sqft is still available for the home on one floor alone without a variance. Therefore a home of 6000 sqft can fit on that lot, designed to fit the existing conditions of R-1. In R-1, the maximum coverage for the site is 30%. The submitted plan only covers 2331 sqft., therefore a plan should fit within setbacks. He does feel the design is very attractive, but that with Mr. DeChesere's experience and talent, he could certainly design a home that fits into the space, adhering to required setbacks.

Chairman Valinoti asks Mr. DeChesere if he has anything to say about this testimony.

Yes. As Mr. Johnson well knows, a lot goes into designing a home. They bought this property because of its unique southern exposure. There is an opportunity for views down streets, across other properties, and he would like to take advantage of those opportunities. The design takes into account required elevator for his mother-in-law, potential flood issues, garage placement away from view, screen porch that allows prevailing winds off the water.

Chairman Valinoti interrupts Mr. DeChesere and instructs him that this is his opportunity to cross examine the witness.

Mr. DeChesere asks Mr. Johnson why he would choose to have a box that doesn't fit into put into the neighborhood, just to fit the parameters. Mr. Johnson replies that it's a design flaw and that character is not addressed in the ordinance and that we are talking about setbacks. Mr. Johnson says that if you choose to grant an Ordinance for aesthetic reasons, you get into a very subjective area. He has served on a BOA and subjective areas are very difficult.

Mr. DeChesere asks to respond. Chairman Valinoti says that Mr. DeChesere has an additional witness, Mr. DeChesere's wife. Mrs. Smith would like to ask a question of the previous witness. Chairman Valinoti swears her in.

Ms. Heather Smith comments that the easy thing to do is come in and cut down the tree and build as we like. She said we can do that, but we'll cut down the tree- so that's an option. Her question to Mr. Johnson is how is having a front porch at a 20 ft setback would affect him because it is in line with Mr. Johnson's existing porch. Mr. Johnson responds that it doesn't affect him, but neither does it conform to the Ordinance. Ms. Smith states that the Town allows

opportunity to examine unique circumstances and procedures, so asks that their request be considered.

Chairman Valinoti asks if anyone has any questions or anything else to say. Danny Sharpe stands and says he has one more thing. With all different houses already encroaching at grandfathered in, what was the thinking to have a 30 ft setback when the existing were not. Chairman Valinoti states that the ultimate goal was to have the houses all setback from the road- it's better for the Town. The Town wanted it that way. Mr. Sharpe asks what was the rules prior to the GMO? Chairman Valinoti says there were none- you could build whatever you wanted wherever you wanted. Houses don't always stay- they're burned down, torn down, and this Ordinance looked to the future.

Mr. DeChesere notes the two blocks closest to his property [note here that one block is R-1 and one block is R-2], and that only that first block is all that is R-1. He says that the setbacks are good on large lots, but in that area lots are not estate-sized lots- they are all smaller lots. In R-2, they are 20 ft setbacks, most of all existing are noncompliant.

Chairman Valinoti asks how big the lot in question is. Mr. DeChesere gives dimensions. Clerk notes lot is 10,001 sqft.[80X125] Clerk pulls the lot up on the overhead screen. The Clerk orients the Board to the GIS Map.

Eric Dammeyer, Chair of the Planning Board, asks to be sworn in to speak to the reasoning of the setbacks. Chairman Valinoti swears him in. Mr. Dammeyer introduces himself. He wants to comment to the purpose. One aspect of setbacks is of course aesthetics. Another is water drainage management. Clearance to the right of way is imperative for utility work in the right of way. The last is safety. In regard to fire/EMS, clearance between buildings and between properties is also accounted for in setting the setback measurements.

Member Carmichael asks for clarification of language for "harmony with nearest existing buildings." So the language allows for harmonious building. Mr. Dammeyer says that has been added to the GMO expressly for consideration. Chairman Valinoti notes that this statement conflicts with State Statute in that the Board of Commissioners does NOT hear arguments to this case. Attorney Davis explains that while the mechanics are incorrect, the intent is clearly reflected.

Chairman Valinoti says we need to swear in the Zoning Official and get her input from the initial denial of the Compliance form. Chairman Valinoti swears in Manager/Land Use Administrator/Clerk Diane Miller.

Ms. Miller denied the original request for compliance because it did not conform to the required setbacks. Mr. DeChesere first made contact June 11, 2013 while searching for property in Oriental on which to build a house, and as such, was well aware of the required setbacks when he purchased the land in question. She produced proof of this communication. She notes that Mr. DeChesere asked Mr. Mays [former owner of Johnson house, DeChesere land, and Camelia Cottage] to re-subdivide the land he purchased between his lot and the cottage in order to gain frontage on 1stAve, thereby allowing him to use High St as a side yard and 1st Ave as the front

address, and build much further into the High St setback. Attorney Davis asks if there is a specific provision in the GMO that addresses corner lot setbacks. She replies that there is not. It is according to EMS addressing.

Ms. Miller states that the point to her showing the Board the GIS map was to help them understand that Mr. DeChesere had attempted to reduce his setback by changing the orientation of the lot and making his lot a corner lot. Mr. Mays did not agree. Member Carmichael asks the Clerk to point on the diagram which lot is in question and what was the proposal to Mr. Mays.

Mr. DeChesere states that before he purchased he came in and asked Diane about doing that and she said it was unlikely that it would happen. Mr. DeChesere states that this prior negotiation is not relevant to this case.

She stated that she did not tell Mr. DeChesere that it wasn't going to happen, or impossible, she told him that he would have to satisfy the three elements required for it to be granted, and that Ms. Duffie was involved in another very similar application which was denied, and that precedent had been set to not grant the setback adjustment. Her notes address the three required elements. First-it imposes a hardship. On a 10,000 sqft lot, and as Mr. Johnson testified, a home of 6,000 sqft can be constructed on the lot. Therefore, it is a self-imposed hardship due to the design submitted. The tree in question is a private tree, not a Town tree, which is protected by Ordinance. Any privately owned tree can be removed at the owner's cost at any time. Also, the Tree Ordinance is in the General Ordinance, not the GMO, so the BOA is not the place for argument concerning Tree Ordinance. As Mr. Dammeyer addressed, the GMO setbacks have been redesigned for drainage, which can be a real issue for us Town-wide. R-1 properties are the most at-risk during storm surge, and this is why we are so stringent with new setbacks. R-2 behind it is higher ground and less at-risk. While aesthetics are important, drainage and emergency aspect are imperative. Also High ST is R-2, so the "harmony with other properties" should not extend into R-2 zones. She displays the Tingle properties, Mr. Johnson's property, Mr. Sharpe's properties, and the Camelia Cottage, the McFadden property – who was denied the same request-Mr. Sharpe was at 23 ft without steps. Quite a range of sizes- the Johnson house is averaged in with the Camelia Cottage to produce that average.

Member Carmichael asks how setback affects drainage. They look again at the map to see which houses are how far from the street.

Noting the distances submitted by Mr. DeChesere, she dismissed the properties in R-2 zone, and noted that the Cottage is almost 60 ft from High St and the Johnson house is 20 ft from High St as its side setback- frontage on South Ave. She also noted, in response to Mr. DeChesere's application, that he wanted to put the garage to the back of the house, but that is not required by Ordinance. By all of the testimony she gave, she believes that Mr. DeChesere has not met the burden of proof. In addition, in conversation with Dr. Miller of the Tree Board, he indicated that the tree was indeed healthy, but not a "specimen" tree- not unusually large or old or rare. She wanted the Board to have all the correct information. "Obviously the further away the footers to the house is better for the tree and construction at its roots would be detrimental to the tree. The radius indicated on plans is according to Ordinance, and even with all of this, Mr. DeChesere's plans have one footer within the radius WITH the granted Variance.

Member Carmichael asks if Dr. Miller indicated survivability of the tree on these plans. Ms. Miller said he did not indicate one way or the other.

Chairman Valinoti notes that construction anywhere near will affect the health of the tree.

Mr. DeChesere will also plan to move the shed with equipment to the other side of the lot. Member Carmichael asks if it is true that anything taken off the front must be added to the back setback and Ms. Miller agrees. Member Carmichael asks if the shed isn't in the setback once moved then. The Attorney states that the entire section is void, not just the portion. (Section 8) so that Mr. DeChesere would not be required to do so because the GMO Ordinance is void due to conflict with the State Statute.

Mr. DeChesere responds to regulations concerning drainage. He works with Ordinances concerning aesthetics and drainage and says that drainage has nothing to do with setbacks. The only control is impervious surface and cistern rainwater control. He describes systems he has installed in his home in Wilmington. Talks about helping the Town install rain gardens and other measures to control floodwater. He talks about the existing nonconformity of the Cottage and the poor condition of it. He deems it uninhabitable. He says that the entire building should be demolished. He then talks about ability of purchaser to use the side setback of 20 ft when they do rebuild. They indeed WOULD build 20 ft from High St. His basic point was that he was here to save a tree. He talked about the current discussions concerning having to take out the old oak in the near future and that Diane indicated both she and the Town were upset about that eventuality.

Chairman Valinoti asks if Mr. DeChesere plans to change the elevation of the lot. Mr. DeChesere says he will be filling enough for water to not stand under the house and drain away- 6-8".

Ms. Miller asks to make one point. Mr. DeChesere spoke of stormwater regulations in Wilmington- that setbacks have nothing to do with drainage- which may be so in Wilmington where there are virtually no setbacks from either the street or other structures in the older parts of the city, but here, it does have something to do with setbacks. His point about the Camelia Cottage not being fit to inhabit due to the water issues it has- that would be part of drainage. Mr. DeChesere states that water drains under the Cottage during rain.

Chairman Valinoti would like to close out testimony. Attorney recommends that we can recess without closing. **MOTION** to recess by Member Olson, seconded by Member Small, for ten minutes. 5-0.

Meeting was called back to order. Board will begin deliberations on the request. Attorney Davis reiterates that the Board will now take the time to get the facts straight and then close the Public Hearing for a vote.

Member Small expresses a wish that Bob Miller was present to speak to short term vs long term viability of the tree in question. In looking at the plan, obviously one footing intrudes gently to the dripline of the tree, but we don't know what "gently" means. Chairman Valinoti describes

subject in front of tree boards everywhere decide rulings into construction vs trees and that any activity inside the dripline is hazardous to the long term survival rate of the tree in question. Clearly, the plan submitted, disregarding the established setback, intrudes to the 15 ft dripline, and any movement of the plan toward the back of the lot would have a greater impact.

Member Khouri as experience with construction and arboretum, desires to maintain the tree canopy, and you can isolate a tree and work around it. It obviously gives the lot additional appeal and he certainly appreciates the effort to preserve the tree.

Attorney Davis reminds the Board that if they get to the approval point, they could certainly impose conditions to preserve the tree by setting limits to the dripline, etc.

Members Olson and Carmichael are looking at the plan trying to determine which lines are the actual planned construction lines. Chairman Valinoti explains the two sets of drawings, one compliant, one not. Mr. DeChesere explains and answers questions about pilings, posts, and footers.

Vice Chair Carmichael asks about setbacks for Camelia Cottage if it is to be replaced. The setback from 1st Ave is 30ft. The setback from High St would be 20' at eaves of 0-25', and the side street setback would be 23' on eaves 25-32'. So if the house were to be replaced, it could be replaced as close as 20' from ROW.

Ms. Miller makes the point that the GMO is constructed as is to move the houses back one at a time, as new construction occurs.

Vice Chair Carmichael makes the point that if a new house comes in today, today, it would be 20' off the ROW.

Chairman Valinoti says the further back the house is, the better drainage into soil rather than into street is better. Member Olson says that is measured by impervious surface, not where that impervious surface is on the lot. Difference between R-1 and R-2, designated issues concerned types of housing, elevation of the properties, aesthetics.

Vice Chair Carmichael asks what is the impact to drainage if granting the request, and if the Camelia Cottage is rebuilt closer to High St. If the rationale is drainage, how does this affect allowing the cottage to be built closer? If it's taken down can it be rebuilt in exactly the same place? Ms. Miller responds that if completely razed, the new structure must conform to GMO in place at time of application. If less than 50% renovation, it can stay nonconforming as is.

Chairman Valinoti states nobody has proved a hardship in order to grant request. One reason would be if you can't do anything with the property. If you can't do anything with it, a Variance is granted so that you can. If you can change the footprint, smaller house, take down the tree, etc. Otherwise it is a self-imposed hardship.

Member Olson offers that losing the tree could be viewed as a hardship. Chairman Valinoti counters that you could make a smaller house. Vice Chair Carmichael states we need to look at

hardship, public safety and welfare, and harmony with the existing neighborhood. Vice Chair Carmichael begins discussion on ability to grant under one and deny under others of the three. Attorney Davis interjects that you must find grounds for all three. If you cannot justify on any one of those three, you cannot grant the Variance.

Vice Chair Carmichael states that he does not believe the applicant has proved hardship. The harmony and general purpose- it would be in harmony if the Cottage were rebuilt closer to high St. On the drainage and safety- not sure that it would be good for public safety.

Chairman Valinoti asks for any other comments on the hardship. Member Olson sees varying degrees where the harmony issue is really clear. Yes, a smaller house could be designed- that was not the intent of the GMO. Permeable surface was the driving force per lot. The lot in question has been unusual for a long time. Having been on both the Tree and Planning Board, public tree or not, it should be saved if possible.

Member Small agrees with Member Olson. If the tree was not on the lot and a consideration, still would make sense to grant for harmony in the neighborhood. The tree is a value to the owner and the community. It is a worthwhile consideration.

Member Khouri agrees and looks to the intent for allowing a Variance based on harmony in existing neighborhoods. Chairman Valinoti reiterates that that section is the section that is currently invalid due to conflict with State Statute. Attorney says the reason it is in there like that and gives discretion because older Towns and Cities are trying to look to future, more perfect construction, while governing all parts of older sections as well. That's why some flexibility is given. He states that the Ordinance is inconsistent (72(8)) . The section that is inconsistent is so because it gives the wrong Board the power to grant Variance and also because it creates a subjective criteria, when Land Use regulation must be objective. No Board can allow subjective change- it becomes political.

Chairman Valinoti asks for a motion to close the Public Hearing. Member Small made a **MOTION** to close the Public Hearing. Member Khouri seconded. **5-0**.

Chairman Valinoti calls for a vote. Attorney Davis suggests that the vote be taken element by element so that the record is clearer.

Attorney Davis assists the Board in locating the elements by which they should judge the applicant's argument. A 4/5 vote is required for all of the elements. If any one fails, the request must be denied. You must find for all of those for it to pass. 6 (subsections to 1) votes must be in the affirmative 4/5 to pass. Attorney Davis instructs that the motion needs to find facts: Section 191 lays out conditions

Practical difficulties/unnecessary hardships: No reasonable return on property without the Variance

A(1): MOTION: Member Small moves that that the applicant in absence of the Variance can make reasonable use of the property, and while desirable to not remove the tree, reasonable use can be made. The hardship presented, though admirable, is self-imposed. Chairman Valinoti

seconds and opens for discussion. Vice Chair Carmichael asks for clarification. There CAN be reasonable use made. Would be more comfortable saying that he has not proved that it is impossible to use the property. Attorney Davis clarifies: If it clarifies for the Board, the moving party may clarify the motion or you could offer a substitute motion. Vice Chair's concern is that the specific reason of removal of the tree should not be noted. The fact that he went through several iterations of design does not mean that there is no iteration that would work. Attorney Davis suggests that it be noted that the Tree Ordinance does not require that the tree be left there. In clarification, the standing motion is that the applicant has not met the burden of proof of hardship. Chairman Valinoti calls for a roll call vote. Olson: No, Carmichael: No, Small: Yes, Khouri: No, Valinoti: Yes. **3-No, 2-Yes**

Attorney Davis: you have a majority that finds it is a hardship that has been proven, but not 4/5. You need to go through all the rest. You need an affirmative motion to grant. If you make the motion in the affirmative, you'll have 3 yes's and 2 no's- you can't get there from here. You can make another motion in the affirmative, if there was a vote made because there was a problem with semantics of the motion, you can take another vote on an affirmatively worded motion to make sure that was not the case.

Vice Chair Carmichael: makes a **MOTION** that the Variance not be granted because the case has not been proven that there were practical difficulties or unnecessary hardships that would result of compliance with the Ordinance.

Vice Chair Carmichael, after discussion with the attorney **amends his motion** for clarity: that the Variance be denied by the Board of Adjustment because the applicant has not been proven the case that he can make no reasonable use nor make no reasonable return on the property. Member Small seconds.

Olson: No, Carmichael: Yes, Small: Yes, Khouri: No, Valinoti: Yes.

Motion to deny Variance: **3-Yes, 2-No**

Chairman Valinoti looks for a motion for A (2)

A(2): Vice Chair Carmichael makes a **MOTION** that the Variance be denied by the Board of Adjustment because the applicant has not proved his case that the hardship results from the application of the ordinance to his property. Seconded by Member Small.

Olson: No, Carmichael: Yes, Small: Yes, Khouri: No, Valinoti: Yes. **3-Yes, 2-No.**

A(3): Vice Chairman Carmichael makes a **MOTION** to deny granting Variance by the Board of Adjustment because the applicant has not proven that [insertion of the criteria in 2(a)iii]The hardship is not the result of the applicant's own actions. seconded by Chairman Valinoti.

Olson: No, Carmichael: Yes, Small: Yes, Khouri: No, Valinoti: Yes. **3-Yes, 2-No.**

A(4): Vice Chairman Carmichael makes the **MOTION** to deny granting the Variance by the Board of Adjustment because the applicant has not proved that the hardship is peculiar to the applicant's property. Seconded by Member Small.

Olson: No, Carmichael: Yes, Small: Yes, Khouri: No, Valinoti: Yes. **3-Yes, 2-No.**

Chairman Valinoti asks to move on.

under **B** : Member Small makes a **MOTION**: That the Variance be approved because the request is in harmony with the general purpose and intent of this Ordinance. Member Olson seconds. Olson: Yes, Carmichael: No, Small: Yes, Khouri: Yes, Valinoti: No. **3-Yes, 2-No**

C: Chairman Valinoti makes the **MOTION** that the Variance be denied by the Board of Adjustment because the public safety and welfare is not assured and substantial justice is not accomplished by granting of the Variance. Vice Chair Carmichael seconds. Olson: No, Carmichael: Yes, Small: No, Khouri: No, Valinoti: Yes. **2-Yes, 3-No.**

Chairman Valinoti looks for another collective motion.

Vice Chair Carmichael makes a **MOTION** to deny the Variance requested based on the conclusion by findings of the Board of Adjustment. Member Small seconds. Olson: (abstaining), Carmichael: Yes, Small: Yes, Khouri (abstaining), Valinoti: Yes.

The application is denied. The applicant has right to appeal to Superior Court. Chairman Valinoti asks for any other business. None is brought forward. He asks for a motion to adjourn. Member Olson makes a **MOTION** to adjourn. Member Small seconds. **5-0.**

The meeting adjourned at 12:05 P.M.

Chairman Joe Valinoti

Town Clerk Diane Miller

Approved _____ Date_____