

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

MUNICIPAL COMPLEX, 1 JUNKINS AVENUE

EILEEN DONDERO FOLEY COUNCIL CHAMBERS

7:00 p.m.

October 22, 2013

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

EXCUSED: Patrick Moretti

ALSO PRESENT: Juliet T. H. Walker, Transportation Planner

*Arrived after Case #10-6

III. PUBLIC HEARINGS – NEW BUSINESS (continued from the October 15, 2013 meeting)

6) Case # 10-6

Petitioners: Janice E. Clark, owner, Richard Clark, applicant

Property: 47 Lois Street

Assessor Plan 232, Lot 16

Zoning district: Single Residence B

Description: The keeping of chickens.

Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Special Exception under Section 10.440, Use # 17.20 to allow the keeping of farm animals (chickens) in a district where this use is allowed by Special Exception.

SPEAKING IN FAVOR OF THE PETITION

Ms. Walker noted for the Board that there were no specific stipulations or special exceptions for this particular use, but the Department recommended that the applicant limit the number of chickens and not have roosters due to noise issues.

Mr. Clark stated that he was the son of the owner, Janice Clark, and wanted three chickens for each of his three children. It would strictly be for the children's experience and for egg production, and there would definitely be no roosters. He included a letter from the neighbors who abutted the back side of the property who had two children and were excited about the proposal. No other neighbors had issues.

Chairman Witham wanted to ensure that the eggs would not be sold. Mr. Clark stated that each chicken would produce six eggs a week and it would not be a revenue-producing enterprise. Ms. Chamberlin asked Mr. Clark if he had thought about waste disposal. Mr. Clark said he had included the topic in his letter. He had a small coop with a tin tray that pulled out that would use the same type of wood chips used for hamsters. He had a sizable garden and would use the compost from it to add to the coop. Each chicken was six pounds at most, so the amount of waste would be minimal. Also, the chickens would not be fed anything that would show up in the eggs, which would keep the odor down. Ms. Chamberlin noted that Mr. Clark had done his research. Mr. Clark said he had been around chickens before so it wasn't new to him.

SPEAKING IN OPPOSITION TO THE PETITION

No one rose to speak.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Ms. Kristin Low of 526 Middle Road stated that she lived around the corner from Mr. Clark and that he had answered her question of whether or not he would ensure that it would be an all-female flock with no roosters or farm animals.

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

DECISION OF THE BOARD

Chairman Witham said the Board had a request for a special exception to have chickens, and it was recommended that they consider two stipulations, one being no roosters, and the second one limiting the number of chickens to no more than three, as the applicant had stated.

*Ms. Chamberlin made a motion to **approve** the application as presented and advertised, with two stipulations: that there be no roosters, and that the number of chickens be limited to three.*

Mr. LeMay seconded the motion.

Ms. Chamberlin said the motion was to accept the petition as presented and it met the criteria for a special exception for farm animals, but seeing that it was only for chickens, she could add a stipulation stating so. It would not be a hazard to the public or to the adjacent property because it would be a small number of chickens and would be more in line with having a pet than a farm animal producing a product. There was no evidence of any detriment to property values or the creation of a traffic safety hazard or excessive demand on municipal services. There was no significant increase in storm water runoff. The applicant had a plan for where the chickens would live, and waste disposal would be a small addition to the neighborhood with no negative impact.

Mr. LeMay wanted to ensure that it was clear that it would be only hens and no roosters. Chairman Witham said it was stated in the stipulations.

The motion to grant the petition with the following stipulations was passed by a unanimous vote of 6 to 0:

- Chickens will be the only farm animals kept on the property.

- The number of chickens will be limited to three.
- No roosters will be permitted on the property.

Mr. Durbin joined the meeting for a full Board of seven.

7) Case # 10-7

Petitioner: Grondahl Family LLC, owner, VMD Companies LLC, applicant

Property: 140 West Road

Assessor Plan 252, Lot 2, 1301-1305

Zoning district: Industrial

Description: Conversion of an existing industrial building to a health club use.

Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Special Exception under Section 10.440, Use # 4.42 to allow a health club in a district where this use is allowed by Special Exception.

SPEAKING IN FAVOR OF THE PETITION

Attorney Malcolm McNeill representing the applicant and owner, Mr. Jim Vigas, and Mr. Bob Clark, Engineer with Allen and Major Associates were present to speak to the application. Attorney McNeill introduced himself to the Board and also introduced Mr. Vigas and Mr. Clark. He stated that they were before the Board after having consulted the Planning Department in regard to Section 4.40 where health clubs, yoga studios, martial arts schools and similar uses were permitted by special exception in industrial zones. Attorney McNeill stated that the applicant was the owner of the property, which consisted of an existing vacant industrial building. He supplied the Board with a number of exhibits relating to the property. He stated that the existing building measured 17,500 s.f. on a 2.2 acre lot. The use complied with all the requirements within the industrial zone. The building consisted of eight industrial condominiums and was located in an area of significant development. Attorney McNeill pointed out to the Board the site and surrounding entities on a map, which included Company Standard of New England that dealt with piping products, a vacant multi-use building that was for sale, Portsmouth Auto Body, Demoulas shopping center with loading docks, PSNH with a storage area behind it, and a number of office buildings with quasi-industrial use. He stated that the street was built to industrial-type standards. There were trucks down the street as well as a small fitness center called Crossfit. Access was off Lafayette Road directly into the site. It was an area of industrial use and non-residential use. The applicant was proposing to landscape the site appropriately, there were no proposed changes in the footprint, and site review was not necessary for the project.

Attorney McNeill displayed an exhibit of the existing building with loading docks in the rear and 72 parking spaces. To comply with regulations for a health club, the engineer had laid out how the spaces fit on the site to reach the necessary 146 spaces. Attorney McNeill then showed the final exhibit graphic of the proposed site layout. He stated that when they first started the application, they were going to use the name Rock and Jump, but it was no longer available, so the new name would be the West Road Fitness Center. Some of the exhibits still said Rock and Jump due to the time they were submitted. The internal use of the building was the same. He said he had discussed the proposed use with the Planning Department and the issue was not whether it was a health club

or fitness center but whether it met the criteria for special exception as contained in the Ordinance. One exhibit showed the internal uses within the building. There would be 36 trampolines, a jump and dunk facility with basketballs and trampolines, a foam pit jumping area, and volleyball and other ball-related activities. There was an admissions desk at the entrance of the facility, a storage area for lockers, and a party function area for groups.

Attorney McNeill told the Board that when he first looked at the brochure on trampoline fitness, he wondered how it would work and how it would be beneficial. It wasn't a common fitness club in New England, and he kept his own children off backyard trampolines. There was a consultant flying in from Tulsa that day who had been delayed, and he could describe the center in more detail. Attorney McNeill had the manual for the operation of the facility, and it dealt with pre-class stretching, the anatomy of how the classes would be conducted, and various types of exercises that affected various body parts. He said that one could easily burn 1,000 calories in an hour. There would also be rope devices for stretching, medicine balls, and weighted balls with handles. It would be unique for the Portsmouth area by offering something different. There would also be opportunities for music-related jumping and some hours related to toddlers with rock-and-jump materials. The age limitation for the facility would be 1-1/2 to 70 years old.

Attorney McNeill then asked Mr. Clark to give an overview of the site so the Board would have an idea of what it was. Mr. Clark said the existing site had 72 parking spaces. The building would not change the overall footprint and met the side, rear and front yard setbacks. They were paint-stripping the pavement at the rear of the building and matching the existing pavement line, and they were removing several loading docks. In addition to the proposed 146 spaces, they would add a few spaces on the corner. The drainage pattern would stay the same. The front door was in a certain location, and they did not need service docks, so they would have one dumpster area.

Attorney McNeill said the access into the site would be the same as existing. The primary access was off Lafayette Road, and the secondary access was in an area off West Road. The street was wide and there were good sight distances views into the facility. He stated that the standards as provided by the Ordinance for particular use permitted by special exception would be met. The building existed and met all the building codes and dimensional requirements for the zone. There was no specific dimensional requirement for a fitness center. The only on-the-ground requirement was for parking, which they complied with. They met all the requirements by adjustment to the site as demonstrated by Mr. Clark. The existing entry points provided reasonable access to the site. The criteria of no hazard to the public or adjacent property on account of fire, explosion, or release of toxic materials had been met. It was not difficult to make the building look better. In terms of activity within the building, there was no potential for fire. There was a sprinkler system within the building for explosion or release of toxic materials. There would be no detriment to property values in the vicinity or change in the essential characteristics of any area, including residential neighborhoods or the business or industrial district, on account of the location or scale of the building, other structures, parking areas, access ways, odor, smoke, gas, dust or other pollutant, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials. The facility would have no trucks, no pollutants, no exterior noise, no glare, no heat, no vibration, and no unsightly storage of industrial materials. Many businesses in the area had outdoor storage of trucks, telephone poles, and so on, but their facility would not.

Attorney McNeill stated that the building was not out of scale with other buildings in the area. They were not impacting any residential neighborhoods by the use of their building. It was not

uncommon to have fitness centers close to industrial activities. In terms of the building, there was none of the criteria to make it unqualified or have unreasonable use. There would be no creation of a traffic safety hazard or substantial increase in the level of traffic congestion in the vicinity. In non-peak hours, there was no significant traffic on the roadway. The developer's intent for use and space activity would be for off-peak hours as well as hours after the day work shift. They complied with the parking requirement, and they were all vehicles, not trucks. The roadway was clearly designed for industrial use. There were adequate sight distances at both locations on the site to accommodate the use in excess of 400' in each direction. There would be no excessive demand on municipal services including but not limited to water, sewer, waste disposal, police and fire protection, and schools. The existing building would have trampolines and normal waste disposal. No unusual police or fire protection would be required. There would be no significant increase of storm water runoff into adjacent properties or streets. The City had not made them aware of any concern with regard to storm water runoff. They complied with all spatial requirements. The building had somewhat of a flat roof, but it was an existing condition, and all they were doing was changing the exterior of the building except for the façade change. The footprint was not changing. The use would be consistent with the general purpose and intent of the Zoning Ordinance and met the specific requirements for a special exception.

Chairman Witham stated that he understood there was a formula for determining the amount of parking, and in that situation, the parking seemed excessive. He realized that the applicant was doing the work to meet the requirements, but he hated to see green space dug up and trees cut down to provide 146 parking spots. If every trampoline were to be used, it would only translate to 48 parking spaces. He asked what the applicant's expectation would be for parking needs during peak times. Attorney McNeill said their dilemma was that, in order to get the special exception, they needed to comply with all of the components of the Ordinance. He said that Ms. Walker would tell the Board that one of her major concerns was the adequacy of parking. Attorney McNeill felt that it was similar to many requirements for banks and drug stores, which were always 2 or 3 times the actual usage, so from their perspective, they did not want to be in a position of having to seek a variance for parking. Their desire to impact the site as little as possible but to comply was a "Catch-22" scenario.

Chairman Witham stated that he was more interested in how many parking spots the facility would require at peak hours. He didn't think it would be 146. Attorney McNeill agreed that it would not be that number. Chairman Witham asked for a ballpark figure. Attorney McNeill said it was a question for the consultant who was on his way, but he would play it out. He thought there would be 50 or 60 trampolines on a busy day and believed that the requirement exceeded the demand but the fact was that it was the requirement. Chairman Witham stated that he would prefer that the applicant try to get the special exception but come back for a variance for parking. He realized that there was expense involved, but cutting down trees and doing extra paving seemed excessive and he didn't like to see the green space sacrificed. Overall, it met the special exception requirement and he knew that the applicant wanted to meet the criteria so that they wouldn't need a variance, but he felt that the site would be better served by more green space and trees than 60 parking spots that would never be used.

Mr. Clark said one of the unique situations would be adding eight spaces where there was lawn and five spaces where there was green space, for a total of 13 parking spaces. The rest of the site was previously pavement that they were just maintaining. Chairman Witham said if the business

did not work, the applicant would save the money that would have been spent by not having to destroy the loading docks, dig up green space, and cut down trees.

Attorney McNeill said there was a presumption of reasonableness to the Ordinance and a specific dictate for a special exception. The criteria for the special exception were clear, and he believed that the applicant met them. The City had decided that the special exception requirement would apply in that particular zone as opposed to the variance criteria. It was permitted as long as the conditions were met and no hardship was required. Mr. Clark had said that only 13 spaces involved green space. Chairman Witham stated that he felt that the applicant had met the criteria for a special exception, but he was encouraging them to come back before the Board. Ms. Walker noted that another option that would require approval from the Planning Board, but not a variance, was a designated reserve parking area. It was not site plan approval, but it allowed for a provision in cases that had a requirement of 20 or more off-street parking spaces. They could designate the rest of it as a reserved parking area where they didn't have to meet the same requirements for striping. It showed that the applicant would have the capacity to provide it but they wouldn't have to do it. It was a process they would have to work out. Attorney McNeill stated that his only concern was being required to go to another Board that they were not required to go to because they met the criteria. Chairman Witham said he saw a huge amount of parking that would not be utilized and all the green space torn down. They couldn't move on relief from the parking that evening, but he was encouraging them to consider this.

Attorney McNeill said that Mr. Vitas was willing to show it as green space or call it proposed parking, as long as the Board agreed that they were in compliance with the parking requirements. Chairman Witham stated that his point was that they could act on the special exception and encourage the green space. Attorney McNeill stated that his client would prefer to have as little impact on the property as possible while complying with the law, and if the special exception were to be granted, he would hopefully consider a parking variance.

Mr. Rheume said that, in light of the facility being designed as a health and fitness one, he had questions about its uses. There was a snack bar shown and he wanted to know what kinds of snacks it would have. Attorney McNeill said they would be similar to the ones that Planet Fitness had. Mr. Rheume said there was a description in the literature about events and party rooms, and he asked if the facility would have catered parties or if people would simply bring in a cake and soda. Attorney McNeill said it would again be modeled on Planet Fitness. It would be like the health club he belonged to, where members had birthday parties and brought their kids in to play on the equipment. It would not be a social center for people who did not use the facility. Mr. Rheume wanted to ensure that the applicant had no intention of having a free-standing sign on the property. Attorney McNeill said he wasn't sure if they would need one, but if they did, it would comply with the regulations. Mr. Rheume said one sign was illustrated as the one on the building and had some sort of design or mural worked into it. Attorney McNeill said it showed the existing building, and it was a challenge to make the building look better. Mr. Rheume said his one concern was to ensure that it complied with the sign ordinance and that anything painted in one color should be considered part of the sign.

Ms. Walker stated that the request that night was not for the sign but for its use, and the sign had to go through the permitting process with the Planning Department where what part was sign and what part decoration would be addressed.

Mr. Parrott wanted to go back to the parking issue. The land usage table shown in the aerial photos noted that the required parking stall size was 8' x 20', but it wasn't consistent with the Article 11 site development standards that called for a width of either 19' or 20', depending on the angle of parking. The requirement for the applicant's type of parking, which was head-in parking, was 19', not 20' as shown in the table. The existing stalls were 8-1/2' x 18.5' and were all in nonconformance, and there was no request on the variances for the difference in dimensions. Attorney McNeill said they would paint them so they complied with the 19' regulation.

Mr. Parrott said that he agreed with Chairman Witham about the quality of the finished product. He was familiar with the site because he drove by it often, and the proposed facility would look better, but he felt that the trees were valuable and added to the appeal of the building itself. Attorney McNeill told him that he was preaching to the choir.

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

Chairman Witham stated that he felt the applicant met the criteria for the special exception but he would encourage him to come back before the Board for a variance on parking so they could preserve 13 spaces of green space. Or, the applicant could go through the Planning Board to gain the 20-space credit. He knew that it was an expense to come back to the Zoning Board, but it may be outweighed. Attorney McNeill that they would not object to a recommendation that would be a requirement if he chose to return. The Board had a recommendation on record which would be helpful. Chairman Witham said they might have to do a straw vote to get it and they would deal with the special exception before getting into it.

*Mr. Parrott moved to **approve** the application as advertised and presented with the stipulation that the parking comply with citywide requirements. Mr. Rheaume seconded the motion.*

Mr. Parrott said the petition was a straightforward re-use of the building and seemed to fit well into the area. The building previously had a lot of different businesses in it, including retail on one corner, and there was plenty of parking with good access to it. The proposed use would not have deleterious effects which they associated with activities, such as noise, pollution, toxic materials, dust and so on. It was a benign use that was contained within the building. They did not require outdoor storage or anything else that could be problematic. He believed, without going through everything point by point, that they met all the requirements for a special exception.

Mr. Rheaume stated that, in general terms, he was also supportive of it. The property was unique because it was on the edge of the industrial district and in a Gateway District that had full retail space. There had been a number of other properties in the area that had borderline uses between industrial and other alternative uses. Even in the Office Research District along Lafayette Road, the Board had noted a couple of properties where there had been talk of changing the zoning to make it more applicable now that the area was moving in a certain direction. He thought that what the application was asking for was an appropriate use, and it would be a permitted use for having a

health club and yoga studio and martial arts school in the gateway district that almost abutted one corner of the property.

Mr. Rheaume went through the standards as provided by the Ordinance for the particular use permitted by special exception. The applicant had made it apparent that it would pose no hazard to the public or adjacent property on account of potential fire or explosion. There would be no detriment to property values in the vicinity; with the industrial nature and various types of activities, he could not see how the use would be detrimental to property values. There would be no creation of traffic safety hazards or substantial increase in the level of traffic congestion. The applicant's use was not calling for lots of people to be leaving all at once. People would be coming and going at various times, and the infrastructure in the area was suitable for the number of vehicles. There would be no excessive demand on municipal services and no significant increase in storm water runoff. The applicant was not changing the size or dimensions of the existing structure, and the paved area was not changing substantially.

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

- *The parking spaces on the property will be laid out to meet the dimensional requirements outlined in Section 10.1114 of the Zoning Ordinance.*

8) Case # 10-8

Petitioners: Brinton & Tatjana Shone

Property: 46 Sherburne Avenue

Assessor Plan 113, Lot 10

Zoning district: General Residence A

Description: Install a 10'± x 7'± right side shed dormer.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.324 to allow a lawful nonconforming building or structure to be added to or enlarged unless the addition or enlargement conforms to the requirements of the district.
2. A Variance from Section 10.521 to allow a right side yard setback for the dormer of 4.5'± where 10' is the minimum required.

SPEAKING IN FAVOR OF THE PETITON

The owner Brinton Shone was present to speak to the application and passed out an additional plan. Mr. Shone told the Board that he and his wife had an early 1900's New Englander third-floor access. It was a 5-bedroom and the room in question was their fifth bedroom. There was a very steep stairway that came up and hit the ceiling within 5', and they wanted to make it more of a usable room but putting a dormer on that side. They didn't want to make it the whole way but rather have it give enough access so that people would not hit their head. Originally they had planned to do two windows, as shown on the plan, but the Planning Department asked them to redraw their plan with three windows. He did not care if they did two or three windows, and two would be fine. The variance would not be contrary to public interest because it would improve the function of a nonfunctional space. They presently couldn't get certain furniture up into the room.

The spirit of the Ordinance would be observed with the building structure and the surrounding homes. The structure met all the setbacks and they were not gaining any lot footage. Substantial justice would be done by granting the variances because they were paying taxes on five bedrooms while the third floor was not entirely in use. It would also improve the safety of the steep stairs. The value of surrounding properties would not be diminished as the aesthetics would match the existing, e.g., same windows, siding, roof, materials, and color. The literal enforcement of the Ordinance would not be a hardship because it was a nonconforming lot and they were not expanding the footprint, setbacks, aesthetics, and so on.

Chairman Witham asked if they were rebuilding stairs or just creating more headroom. Mr. Shone said they had looked at ways to rebuild the stairs, but it was costly and not practical because it would take up another bedroom.

Mr. Rheume said the Board had had similar requests for homes near Mr. Shone's, and he wanted to understand what the sight lines would be if they added the windows, or whether it was just illumination for the stairwell. Mr. Shone said there was one window in the room existing on the front side of the house that gave off natural light, and the sight line would be above the house next door. Mr. Rheume said that the gambrel next door was somewhat lower and asked Mr. Shone if he had talked to the neighbors to see how they felt about the added windows. Mr. Shone said he had a great relationship with his neighbors. His next-door neighbor had just done a renovation, and it was one of the reasons he changed his windows in the bedroom from full to squares and was keeping them small so as not to look into his neighbor's 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 **approve** the application as presented and advertised. Mr. Mulligan seconded the motion.*

Mr. Durbin stated that the Board had an application for a right-side shed dormer on a nonconforming building. Granting the variance would not be contrary to the public interest and would observe the spirit of the Ordinance as well as preserving light and air space for the neighbors. There would be no intrusion and it would be within the existing character of the neighborhood. Granting the variance would do substantial justice. Balancing the hardship to the applicant vs. any detriment to the public weighed in favor of the applicant. Granting the variance would not diminish the values of the surrounding properties. If there was a concern about surrounding properties being impacted by the project, some of the neighbors would have shown up, and it did not appear that the upgrade to the home would impact surrounding property values.

Mr. Durbin stated that the property had special conditions that distinguished it from other properties in the area, in that the applicant had an older home with physical constraints in accessing the third floor that made it difficult to fully utilize the property, so there was a hardship. Mr. Durbin also found that, owing to the condition of the property, there was no fair and substantial relationship between the general purpose of the Ordinance and the specific application

of the property. The light and air space of the neighbors was preserved, which was ultimately what the Ordinance was concerned with, namely, any type of encroachment or expansion of a lawfully-nonconforming structure. For those reasons, he had made the motion that the application be approved. Mr. Mulligan concurred with Mr. Durbin and had nothing to add.

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

9) Case # 10-9

Petitioners: Adam D. Marcionek & Cara A. Murphy

Property: 50 Swett Avenue

Assessor Plan 232, Lot 59

Zoning district: Single Residence B

Description: Convert existing 13½' ± x 19'± rear deck into a three-season enclosed porch.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.324 to allow a lawful nonconforming building or structure to be added to or enlarged without the addition or enlargement conforming to the requirements of the district.
2. A Variance from Section 10.521 to allow a left side yard setback for a rear addition of 5'± where 10' is required.

SPEAKING IN FAVOR OF THE PETITION

The owner Mr. Adam Marcionek was present to speak to the application. He stated that his plan was to convert the existing deck as shown on the exhibits and build it up. The deck was currently an open air deck. The house was 1200 s.f. and one of the smallest in the neighborhood. When they used the deck in the late afternoon, they had problems with mosquitoes, so they wanted to extend the use into the spring by enclosing it with walls, windows and screens. It was the existing structure, and the footprint would not change. A variance had been granted to the previous property owner in 1997, but because the intensity of the space was changing, they had to reapply. He had had informal conversations with neighbors on both sides and across the street, all of whom approved the proposal.

Mr. Marcionek did not believe that there was a reason that was contrary to the public interest because they were not expanding the lot or the existing footprint. Use of the porch and property as a whole would still be that of a single family home. Substantial justice would be done because they could use it for three seasons. There was no reason to believe that surrounding properties would be diminished in terms of their property values. Literal enforcement of the Ordinance would result in an unnecessary hardship. They had gone through a few reiterations to see if they could shrink the existing condition, but if they were to shift it to the back of the house, it would run into the chimney and the bulkhead, which was the access to the basement, so the easiest way was to stick with the footprint.

Mr. Rheume asked Mr. Marcionek if the set of stairs coming off the back of the porch was the existing set. Mr. Marcionek said they were and would stay the same size and configuration.

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

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

*Ms. Chamberlin made a motion to **grant** the petition as presented and advertised. Mr. Parrott seconded the motion.*

Ms. Chamberlin said that the presentation covered most of the issues. It would not be contrary to the public interest because the footprint of the property was not changing. It was simply adding mosquito protection and there was no evidence that it would have an impact on neighbors or change the essential characteristics of the neighborhood, so in that way it would observe the spirit of the Ordinance and do substantial justice. There was no evidence that value of surrounding properties would be changed at all. The special condition was that it was a small house on a small lot, and adding the extra living space would make more intensive use of the existing use. For that reason, she would grant the variance.

Mr. Parrott said it was a modest change that was in keeping with the rest of the house and the area, and he thought it was appropriate. Chairman Witham said he knew the neighborhood pretty well, and over the years he had seen some conversions and three-season rooms added to the homes, none of which had seemed to adversely affect the neighborhood or change the character, so he found the request reasonable.

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

10) Case # 10-10

Petitioner: Elizabeth Blaisdell

Property: 77 New Castle Avenue

Assessor Plan 101, Lot 50

Zoning district: General Residence B

Description: Replace rear barn in smaller footprint.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.321 to allow a lawful nonconforming structure to be extended, reconstructed, enlarged or structurally altered in a manner that is not in conformity with the Ordinances.
2. A Variance from Sections 10.572 and 10.521 to allow a left side yard setback of 3.0'± for the barn where 10' is the minimum required for an accessory structure.
3. A Variance from Sections 10.573.20 and 10.521 to allow a rear yard setback of 3'± for the barn where 10.5' is the minimum required for an accessory structure.

SPEAKING IN FAVOR OF THE PETITION

The owner Ms. Elizabeth Blaisdell was present to speak to the application. She stated that she wanted to rebuild a dilapidated barn on her property. Her intent was to create a smaller footprint and larger setbacks than what existed on the property. She wanted to create a 3' setback in place of the 1-1/2' to 3' setbacks that she currently had. She also wanted to square the barn on the property to achieve those setbacks, which would allow more space to maintain the structure. She stated that while 3' might not seem like a lot, it was generous for the neighborhood, and most of her neighbors had smaller setbacks. She told the Board that she had presented to them the previous month and since then, she had talked to the neighbors and they were all in support. The Board had a letter of support on file, and she submitted additional letters of support. Everyone agreed that the new proposal, which was smaller in size and height and had more generous setbacks, was acceptable. It would not diminish the properties in the neighborhood and would be in keeping with the neighborhood. The neighbors were excited to see an eyesore replaced with a structure consistent with her Greek Revival home. The current structure was two structures that were sandwiched together at one point with different roof lines that dropped all the water back onto Humphrey's Court. The new structure would have a Cape roof, which would be in keeping with the main home. She would increase the setbacks to have more room for maintenance. She felt that the previous owners weren't able to maintain the barn as well because of the 1-1/2' setbacks. Some privacy would be added with the new plan, which her neighbors were supportive of. She was not increasing the intensity of use, so there would be no hardship in the neighborhood because any change in existing use of the property was mainly storage and work space. If she were forced to conform to the required setbacks, she would lose her backyard.

Chairman Witham remembered that they had had a lengthy review of the previous application, and it sounded like Ms. Blaisdell listened to the concerns of the Board and the abutters. Mr. Rheume asked her if she had consulted the Historic District Commission with her revised plans. Ms. Blaisdell said she just met with Ms. Walker. Ms. Walker advised that Mr. Cracknell had reviewed the new plans. Ms. Blaisdell said they had discussed different pitch roof options and she had gotten the impression that going to anything shallower than the 80-12 pitch would not be in keeping with the neighborhood or the property, so Mr. Cracknell had said not to go lower than 80/12 pitch.

Mr. Harold Whitehouse of 58 Humphrey's Court told the Board that the applicant's property abutted the rear end of his property, and he could see the blighted red barn. He wanted to compliment the applicant on submitting a revised plan that was a lot different from the original plan. He had viewed the plans in the Planning Department office and approved of them because they were on a smaller scale. It was only a 14' high building with 35' x 16' dimensions, and it would certainly be an asset to area. The existing building was dilapidated and must be torn down. Ms. Blaisdell was changing the footprint a bit and had scaled way back, and he approved of it.

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

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

*Mr. Mulligan moved to **approve** the application as presented and advertised. Mr. Durbin seconded the motion.*

Mr. Mulligan stated that the revised project from the previous month still required some setback relief and that the applicant had presented it well and should be commended. He saw quite a bit of an improvement from what the Board had seen the previous time, and it was also quite a bit of an improvement over what currently existed. He stated that granting the variance would not be contrary to the public interest nor contrary to the spirit of the Ordinance because allowing the rebuilding of the barn, even though it violated the setbacks, would not alter the essential characteristics of the neighborhood nor affect the health, safety or welfare of the public. As previously noted about the south end, the setback requirements were not slavishly followed, and the applicant wanted to move away from the nonconformity of the current setback. It was quite a bit of setback relief, but they were smaller setback violations than those that currently existed, so those parts of the criteria were met. Granting the variance would result in substantial justice because the loss to the applicant if denied would outweigh any possible gain to the public. The applicant had brought a project that resulted in a smaller footprint with smaller setback violations than what currently existed, so he could not see what the gain to the public would be by not allowing it to go forward.

Mr. Mulligan stated that granting the variance would not diminish surrounding property values; in fact, they would benefit from the project when it was completed. As to unnecessary hardship if they literally enforced the Ordinance, there were already special conditions to the property because it was already in a noncompliant state. It was a very small lot, and if the applicant were required to comply with the 10' setbacks, she would essentially lose her backyard, which made no sense at all. So, there were special conditions of the property that distinguished it from others, and there was no fair and substantial relationship between the purpose of the setback Ordinance and its application to the property. The use was a reasonable use because it had existed on the property for a long time. For those reasons, he thought it met the criteria for the variance.

Mr. Durbin concurred with Mr. Mulligan. He added that what the applicant was proposing to do was essentially less nonconforming than what existed, and she should have the right to continue in that particular location. She had represented that it was not feasible to relocate and come into compliance with the setbacks. She reduced the height of the proposed structure, which was a major concern for neighbors when they appeared in opposition at the last meeting. He noted that there were no neighbors in opposition that night, so he assumed that they were on board with the plan. They also had one neighbor in support, which was a positive for approving the application.

Ms. Chamberlin stated that she greatly appreciated the applicant working things out with neighbors and taking the time to come back with a plan that was agreeable to the community. Mr. Rheume agreed and was pleased that the applicant and her neighbors were able to work out a solution that appeared to be a win for everyone involved, and he hoped that the HDC would look favorably upon the solution the applicant had come up with. Chairman Witham stated that, in addition to coming up with something agreeable to the neighbors, Ms. Blaisdell had come up with something that met the criteria for the variance, which was a bit more important.

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

11) Case # 10-11

Petitioners: One Gosling Road LLC, owner, New Frontiers Church, applicant

Property: 1 Gosling Road

Assessor Plan 239, Lot 13

Zoning district: General Business

Description: Allow a religious use in a General Business District.

Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Special Exception under Section 10.440, Use # 3.11 to allow a religious use in a district where this use is allowed by Special Exception.

SPEAKING IN FAVOR OF THE PETITION

Mr. Bob Marchewka stated that he was appearing on behalf of the applicant, and Mr. Ian Ashby, church pastor, was also present to speak to the application. Mr. Marchewka told the Board that the applicant currently had a purchase and sale agreement on the property and wanted to occupy the property to use it for a religious use for their church. It was a special exception. There would be no hazard to the public or adjacent properties from fire, explosion, or release of toxic materials because it was a church and they didn't anticipate using those materials. There would be no detriment to property values in the vicinity or change in the essential characteristics due to location of buildings and other structures, parking areas, access ways, odor, smoke, gas, dust, or other pollutants, noise, outdoors storage, etc. This was a former car dealership, and by changing the use to a church, there would be none of the uses that were there that may have been a detriment to the neighborhood. There would be less outside storage, no vehicles stored outside, and certainly no use of materials that might have been used previously to work on vehicles. It was a better use in terms of the neighborhood. There would be no creation of a traffic safety hazard or substantial increase to the level of traffic congestion in the vicinity. The building would be used primarily on Sundays for religious services. Currently, the number of parishioners was about 250 and was expected to grow within the next five years to as many as 400, 20% of which were children. So, in terms of parking, according to zoning it could accommodate over 600 people, and it was not anticipated that the church would use that many spaces. The building could accommodate over 700 people in terms of what their use required, and that was nowhere near what they anticipated using the building for. In terms of how the property was being used, it was a bit oversized for their needs, according to the Zoning Ordinance.

In terms of traffic, there were two entrances and means of egress to the property for vehicles. There was no anticipation of traffic issues. The infrastructure in that area of town was built to accommodate a great deal of traffic with the malls, Pease, and the rest of the businesses. He felt that there would be little if any impact on the property. There would be no excessive demand on municipal services such as water, sewer, waste disposal, police and fire protection, and schools, and no significant increase of storm water runoff. The site would remain the same. There were no improvements planned to the building and no changes to the building or site. It was just a change in use, and they considered it a less intense use than what was there previously.

Ms. Chamberlin asked for confirmation that peak use would be on Sunday mornings with approximately 250 people attending. Mr. Marchewka agreed. Mr. Ian Ashby verified that 250

people would be the maximum for about two hours on Sunday mornings. Ms. Chamberlin asked if they anticipated having other events that would draw more people. Mr. Ashby said they occasionally had training events but at a reduced number of 20-30 people.

Mr. Rheume stated that there seemed to be an easement or agreement to allow the entryway off Gosling Road in the northeast corner of the property, and he asked if it was the applicant's intent to keep it that way. Mr. Marchewka said there would be no changes. Mr. Rheume said he wanted it validated because it crossed the property line. Mr. LeMay said there were three architectural plans showing elevations and floor plans, and he asked if they were the existing ones. Mr. Marchewka said they were all existing plans that the church used to figure out they how might use different portions of the building for different church uses. Mr. LeMay asked if there would be changes to the building's exterior and Mr. Marchewka stated there would not.

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

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

*Mr. LeMay made a motion to **approve** the application as presented and advertised. Mr. Parrott seconded the motion.*

Mr. LeMay stated that it was straightforward and seemed to be a less intense use than what existed currently. The area could withstand it from the standpoint of traffic and parking. There was no hazard to the public or the adjacent properties on account of potential fire, explosion, or release of toxic materials. It was less intense than a car dealership, which had a minimal amount of those to begin with. There was no detriment to property values in the vicinity or change in the essential characteristics of the area, including residential neighborhoods, businesses, and industrial districts. There would perhaps be some signage, but not a substantial change, and he did not think it would impact the commercial area. There was no creation of a traffic safety hazard or substantial increase in the level of traffic congestion in the vicinity. He did not see any impact because the area had light traffic on Sunday mornings. There would be no excessive demand on municipal services including but not limited to water, sewage, waste disposal, police and fire protection, and schools. He felt that it would be the same or less than what existed. There would be no significant increase of storm water runoff onto adjacent properties or streets because there were no changes to the property.

Mr. Parrott concurred with Mr. LeMay and said he had nothing to add.

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

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- 12) Case # 10-12
 Petitioners: Jessica L. Fiske & Evan W. Patten
 Property: 250 Clinton Street
 Assessor Plan 159, Lot 9

Zoning district: General Residence A

Description: Install a/c condenser in front of left side deck.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Sections 10.572 and 10.521 to a right side yard setback for an a/c condenser of 6' where 10' is required for an accessory structure.
2. A Variance from Section 10.521 to allow building coverage of 27.1%± where 25% is the maximum allowed.

SPEAKING IN FAVOR OF THE PETITION

Mr. David Joy stated that he was the contractor installing the HVAC system and was representing the applicants.

Ms. Walker said that she wanted to note a correction in the staff report. The aerial map indicated the wrong house. It was the one closer to the corner, which she pointed out.

Mr. Joy told the Board that the condenser was located between the deck and the alcove, not in front of the deck. That particular side of the house was chosen because there were no neighbors on that side. The other side was the children's play area, and the neighbors could hear the condenser and it could be seen from the road. The condenser would be tucked into a corner so it would not be seen from the road, and they met all the distance requirements.

Chairman Witham asked what the existing lot coverage was or the footprint. Ms. Walker said that based on the building permit, the current coverage of all structures was 2,015 square feet. Chairman Witham felt that Ms. Walker might be adding .1%. Ms. Walker said it would take a few moments to find the information. After consulting her notes, Ms. Walker stated that the existing lot coverage was about 26%, based on what the applicant had provided. Mr. Rheume said that he got 26.6%. Chairman Witham concluded that they had a ½% lot coverage increase on top of the 6' side yard setback.

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. Rheume made a motion to **approve** the application as presented and advertised. Mr. Mulligan seconded the motion.*

Mr. Rheume stated that the applicant had chosen the best place to put the condenser. It would face into a paper street extension, so the noise from the condenser would be heading out toward the water and would not affect the other houses. No one would be able to tell that there was only a 6' setback because the paper street seemed to be an extension of the property's natural lines. He felt that the applicant had a good case. The variance would not be contrary to the public interest because the condenser was small and would be placed in a location that was invisible to the public, resulting in no detriment to the public. The spirit of the Ordinance would be observed because it

would be a 6' setback where a 10' setback was required, which was a marginal increase in coverage and only about 1-1/2% over the allowable. They were also increasing it another 1/2%, which totaled a 2% increase. The 6' setback vs. the 10' on the property would be going out to the paper street and would not impact the distance to the property line.

Mr. Rheume stated that substantial justice would be done by allowing the homeowner to take advantage of modern air conditioning convenience and by placing it in a location outside of where it would be bothersome to their own yard. The value of surrounding properties would not be diminished because it was a very small change to the property, so it was unlikely that it would impact property values. As to the hardship criteria, there were special conditions of the property that distinguished it from the other properties in the area. It was unique in that the property line was on a paper street and the Board was required consider it, but from a realistic standpoint, it would not be a concern. He noted that, if the property owner had the paper street available to him, he would be in full compliance with the Ordinance. Mr. Mulligan concurred with Mr. Rheume.

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

IV. OTHER BUSINESS

Chairman Witham stated that he wanted to mention a few quick items to the Board before adjourning the meeting, just to 'plant some seeds'.

1. Staff Reports. Ms. Walker had passed along a survey regarding staff reports and said that perhaps the Board members could go through it on their own time and fill it out and bring it to the next meeting so that Ms. Walker could refine it.

2. Rules & Regulations. Once in a while, the Board reviewed the rules and regulations, and Chairman Witham asked the Board to consider reviewing the requirements for an application for suggestions as to how they could improve the language of those requirements to have a more complete and clear application. Ms. Walker and Ms. Koepenick had to work with the applicants when they came in and made a lot of strong suggestions for the applicant, and whether the applicant followed the suggestions or not was not up to them. However, there were ways that the Board might be able to strengthen the application form so that they didn't run into a situation like they had had the previous week, when the site plan for the shed was executed. Maybe the Board could strengthen the language so they could deal with those issues before they got to the Board. For example, there was not much said in the language about height, and it talked about yard dimensions when it meant setbacks, which could be confusing to a first-time applicant who may think it meant the width and depth of a yard instead of setbacks. There were things they could clean up to make their work easier.

Mr. Rheume asked if Chairman Witham was looking for just their rules and regulations or if it was spelled out in the Zoning Ordinance which wasn't under their direct control, in which case they would be looking for recommendations there as well. Chairman Witham said he was thinking about what was actually given when an applicant picked up form, and what was specifically written on the form. He didn't think they cross-referenced the Zoning Ordinance to get the whole in-depth analysis of what was needed. Mr. Rheume asked if the members could have a copy of the application form e-mailed to them. He said that he had been okay with approving the

Sherburne Avenue application that evening, but by their rules, it should have required some plans of the interior to help them make a decision.

Chairman Witham said that Ms. Walker and Ms. Koepenick sometimes requested more information from the applicant, and the applicant would say that they'd get back to them. Then the application was advertised, and maybe the Board would get the information or not, and he hated getting into those situations where they were constantly tabling or postponing the application because of a missing piece of information or clarification. He had offered to meet with Ms. Walker once a month before advertising an application so they could have two sets of eyes look at it and decide whether or not they would deal with it or send it back to the applicant. If they sent it back, the applicant would have another month to do it correctly instead of piecemeal. He felt that the Board had stretched its powers the previous week by granting a few variances that were not advertised because they were hanging their hats on the way the language was written. He had felt it was acceptable in the sense that one issue was a sign where the tail went up another two feet and didn't really change the request, and the other issue was the shed, for which they had a letter from the direct abutter explaining that he understood the situation.

Chairman Witham stated that, in the future, he would only be comfortable acting on what was strictly advertised and not taking any liberties. They had done it the previous week, but in hindsight he did not want to set a precedent. He asked how the other members felt. Mr. LeMay said it was good to have some flexibility for a minor deviation and not have to come back the following month and go through it all again, but he didn't want to bend the rules in a way that would get the Board in trouble if an applicant filed an appeal. Chairman Witham agreed and said that the word 'minor' was a very subjective term. Mr. Parrott agreed and said that the Board had to do what it said in plain English and what was advertised.

Mr. LeMay said they were talking about procedural things, and he was concerned with the number of times they continued or tabled cases. He thought that the Board had to be stricter because it was abusive to people who had been notified to continue these things while he realized that sometimes it was out of their control like when the applicant needed to get this and that, and the Board had thought the applicant would be ready. If the applicant was not ready, he or she should send out more notices and sign up again. Mr. Parrott agreed. Chairman Witham concluded the discussion by reiterating that he just wanted some ideas of what they could do to tidy up some of the applications and be a little more rigid by stating that the applicant was not ready, and it would help alleviate some of the burden that Ms. Walker and Ms. Koepenick had from all the paperwork.

V. ADJOURNMENT

It was moved, seconded and passed by unanimous voice vote to adjourn the meeting at 8:40 p.m.

Respectfully submitted,

Joanne Breault
Acting Administrative Clerk