

**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 28, 2014
Reconvened From
October 21, 2014**

MEMBERS PRESENT: Chairman David Witham; Vice-Chairman Arthur Parrott;
Susan Chamberlin; Charles LeMay; David Rheame. Alternate:
Jeremiah Johnson

MEMBERS EXCUSED: Derek Durbin; Christopher Mulligan; Alternate: Patrick Moretti

ALSO PRESENT: Juliet Walker, Planning Department

I. APPROVAL OF MINUTES

B. September 16, 2014

Mr. Rheame and Mr. LeMay requested changes and/or clarifications to pages 15 and 16.

*It was moved, seconded and **passed** by unanimous voice vote to approve the Minutes with the proposed changes.*

II. PUBLIC HEARINGS - NEW BUSINESS

8) Case # 10-8

Petitioner: Kathleen L. Belavitch Revocable Trust, Kathleen L. Belavitch, Trustee

Property: 354 Lincoln Avenue

Assessor Plan 130, Lot 28

Zoning District: General Residence A

Description: Replace rear stairs with single-story left/rear addition and left side deck.

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 building or structure to be extended or reconstructed without conforming to the requirements of the Ordinance.
2. A Variance from Section 10.521 to allow the following: (a) A right side yard setback of 9'6" ± where 10' is required; and (b) 36.1% building coverage where 25% is the maximum allowed.

SPEAKING IN FAVOR OF THE PETITION

The property owner Mr. James Horne told the Board that he and his family had lived in the home for two years and wanted to extend the gable end on the driveway side of the property and remove the existing ingress/egress deck. He indicated that the 10'x10' kitchen had been improperly constructed and was held up only by a frost wall on one side and a pole on the other, letting in cold air. He wanted to modernize the house layout because the tiny kitchen did not fit a modern lifestyle. Ingress/egress from the back of the house was also difficult. He wanted to be able to access the house on grade and have a place to put coats, shoes and similar items. Even though the house itself was large, the layout didn't work because the back of the house was a dead end. The renovation would increase the flow and give access to the kitchen, dining area and living room. The backyard was a large, open space and important to them, and he felt that the addition would not have a detrimental effect on overall appearance.

Mr. Rheume stated that he wasn't concerned about the gable extension but asked whether the new one-floor sunroom would be added onto the side of the property. Mr. Horne replied that it was actually an extension of the kitchen which currently had no eating area and the extension would have access to the outside. Mr. Rheume then raised the hardship criteria, which he said addressed special conditions of the property that distinguished it from others, and that a unique hardship had to warrant the variance being granted. He asked Mr. Horne what there was about his property that was unique from other properties and made it necessary for relief in terms of total square footage. Mr. Horne said that he was not very familiar with other houses in the neighborhood but had seen a lot of chopped-up New Englanders that had additions put on, such as mudrooms, garages, and kitchens, because a lot of the houses were functionally obsolescent. Living in his house in its present condition was a hardship for a modern family.

Ms. Chamberlin asked Mr. Horne if he had talked to his abutters. Mr. Horne replied that he had talked to the two abutters, one of whom was his architect Mr. Brian Murphy. The other abutter's house was a rental property, and he knew the tenants well but the owner lived elsewhere. He felt that Mr. Murphy would be the most affected, but he and Mr. Murphy had spent about four months coming up with the renovation design.

Chairman Witham stated that there were five criteria that Mr. Horne had to meet, and the Board preferred that applicants address each one. He asked Mr. Horne to address some of the criteria. Mr. Horne replied that they had a large backyard and he couldn't see how it would be contrary to the public interest because he and his architect had worked hard to create an aesthetic and pleasing design. The rooflines worked, and he didn't believe it would affect his neighbors, especially considering that several of the other homes occupied a lot more of their lot than they did. Mr. Horne believed that the project would enhance his home's appearance and make it more valuable, and it would increase the value of neighboring homes.

**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 opened up further discussion, saying he was a bit torn about the total square footage being covered on the property. He felt that it was not too egregious but would be concerned if there were not some hardship in the lot. He felt that the setbacks where the structure was situated on the lot presented a good argument for the hardship criteria, but he was struggling with what would justify the criteria for additional square footage for one story for the dining/living/kitchen area because it seemed to be a modest addition.

Chairman Witham stated that there were concerns with lot coverage in that zone in order to protect abutters. The location of the square footage was almost in the middle of the property, which had that going for it. It went inward, so the neighbors would still be protected in terms of light, air and density. He felt that the special conditions criterion was always a challenge.

*Mr. LeMay made a motion to **grant** the petition as presented and advertised. Vice-Chair Parrott seconded the motion.*

Mr. LeMay stated that the variance would not be contrary to the public interest and the spirit of the Ordinance would be observed because it was clear that the expansion would be consistent with the neighborhood and would not change its nature. He also didn't believe that it would be contrary to the public interest because the impact on the abutters was already established as this was an infill. While the big issue was the 10% increase in coverage, it was interior to the lot. Substantial justice would be done as the benefit to the applicant in granting the variance would not be outweighed by any possible harm to general public by adding a small percentage of lot coverage. He stated that the value of surrounding properties would not be diminished. One of the abutters was the architect, and he would not do anything that was contrary to values in his own neighborhood. As to literal enforcement of the Ordinance, the hardship was caused by the age of the house, its siting on the lot, and the functional obsolescence of the property. To enforce the zoning would cause a hardship on the owner by having him continue to make do with the building arrangement.

Vice-Chair Parrott concurred with Mr. LeMay and stated that the garage was between the addition and the next house, thus mitigating the impact. The neighborhood was dominated by fairly large houses on small lots, so the renovation would not change the nature of the neighborhood.

Mr. Rheume stated he would support the motion and thought Vice-Chair Parrott and Mr. LeMay made good points. Chairman Witham stated that he echoed Mr. Rheume's comment. He felt that if the lot coverage were a 2-1/2 story structure, he'd feel differently, but the overall change was a deck and a one-story.

*The motion **passed** by a vote of 7 to 0.*

- 9) Case # 10-9
 - Petitioner: Kate M. Swenson Revocable Trust 04, Kate M. Swenson, Trustee
 - Property: 72 Orchard Street
 - Assessor Plan 149, Lot 31
 - Zoning District: General Residence A

Description: Add second and third floors to existing one-story rear wing.

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 building or structure to be extended or reconstructed without conforming to the requirements of the Ordinance.
2. A Variance from Section 10.521 to allow a right side yard setback of 7'± where 10' is required.

SPEAKING IN FAVOR OF THE PETITION

The general contractor, Mr. William Greenier, representing the applicant distributed a letter to the Board that indicated approval from all the abutters. He stated that an existing first-floor addition off the back of the house that had been there for 10-12 years. At some point, there had been a variance allowing it. His client wanted to renovate the house because, like other families with children who bought old houses, he wanted to add much-needed space.

Mr. Greenier believed that granting the variances would be in the public interest because it was a reasonable request. They were simply going up to a full second floor and a third floor with a dormer roof and adding a master suite, bath, laundry room and improving the stairs while adding a fully-compliant set of stairs. They would not do anything to the front of the house's architectural integrity. The addition would be added to an existing structure and would not go outside of that structure, so they would not be doing anything more nonconforming than what already been done. To grant the variance would not go against the neighborhood or decrease property values. It would help the family and let them stay in the neighborhood, and it would add value to neighboring properties as well. The submitted packet included photos of other residences in the area that reflected what the applicant was doing, such as additions going up to the third-story attic.

Mr. Rheume stated that the extensive dormering on the back end of the third floor of the new addition bothered him. He knew the goal was to create a master suite, and at some point the roof pitch became an issue for having a full height. He saw the second master closet and a sizable bathroom. Part of the argument that had been put before the Board was from the written application, noting that it would be in the public interest because it was consistent with other expanded homes in the neighborhood, and that the new expansion would be an appropriate size for the neighborhood, yet he didn't see anything in the neighborhood examples that showed dormering to the extent that the applicant was calling for. Mr. Rheume asked Mr. Greenier if he had other examples of large shed dormers in the back. Mr. Greenier replied that there were different types of dormers in the neighborhood. He cited the house on the corner of Ash and Orchard Streets that had a 'doghouse' dormer and other dormers that went up three stories. He cited 104 Orchard Street as an example of a sizable addition on the back of the house. He also believed that people would not see it because the houses in the back were very high, but even if they did, he didn't think it was a size that would diminish property values.

Ms. Chamberlin asked whether it was accurate that the only variance required was the right yard side setback of 7 or 10' and was told that it was.

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 **grant** the petition as presented and advertised. Ms. Chamberlin seconded the motion.*

Mr. Rheume stated that he was not a huge fan of dormers in the back of the house because they added more size to the structure than other comparable homes with similar additions. Most of them were two stories with modest gables. However, the applicant’s representative had made a suitable case, saying it was at the back of the property and sort of hidden, so he did not think that it would create a light and air issue on either side of the property. What was being asked for relief was a modest 7’ setback where 10 feet was required, so he felt that it was a reasonable request. Granting the variance would not be contrary to the public interest because the extension was on the back of the house, and a lot of the older homes in the neighborhood typically had additions put on for extra room, making it more of the standard. Because it would be on the back of the house, it would not change the street rhythm. The spirit of the Ordinance would be observed because it was a minor request in terms of relief. The home was situated on one side of the property line, and other homes were situated the same, so there would be no light and air issues. Substantial justice would be done because the owner would be allowed to make full use of the property and create an expansion that would add a modern feel to the home with no harm to the general public. He stated that surrounding properties would not be diminished because the expansion would probably add value to the home and surrounding properties. The negative effects of the dormering and the size of it would probably not be significant enough to negatively impact the surrounding properties.

As for the hardship criteria, special conditions of the property included the nature of the lot, which was deep and narrow, and the way the home was situated on one side of the lot when it was built. Any addition would create a situation where side relief was necessary. There was no fair and substantial relationship between the general public purposes of the Ordinance and their application to the property because light and air were concerns of the Ordinance and he didn’t see a general impact on that. There was support from the abutters, and the change would not be out of place or out of character for this neighborhood so he recommended approval.

Ms. Chamberlin stated that she had nothing to add.

Chairman Witham stated that he generally shared Mr. Rheume’s concerns about extensive dormers, but only one of the dormers needed a variance of 3 feet, and it was the back third of the house, so he was comfortable granting the variance.

*The motion **passed** by a vote of 7 to 0.*

- 10) Case # 10-10
- Petitioners: Charles J., Jr. and Kimberlee S. McCue
- Property: 105 Middle Road

Assessor Plan 152, Lot 18

Zoning District: Single Residence B

Description: Reconstruct 10'± x 18'± rear addition & stairs in same 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 building or structure to be extended or reconstructed without conforming to the requirements of the Ordinance.
2. Variances from Section 10.521 to allow the following: (a) A 5'± right side yard setback where 10' is required; and (b) 22.2%± building coverage where 20% is the maximum allowed.

SPEAKING IN FAVOR OF THE PETITION

The general contractor, Mr. David Calkins, representing the applicant stated that after investigating the renovation of the addition, he had concluded that the addition was structurally unstable and some elements were unsafe. He indicated a photo that showed one of the gable walls leaning in and said that the listing was created by the roof system of 2'x4's being off center and sloping in, causing the walls to lean in. He felt that the addition would eventually fall in on itself. He referred to another photo that showed a hodgepodge of columns and blocks and timbers holding up the structure and stated that the building needed to be torn down. There was no salvage factor or good way to renovate the addition and meet building and energy codes.

Therefore, they were seeking relief for a side setback because a hardship had been created. He felt that granting the variance would not be contrary to the public interest but it would be contrary if the addition was allowed to continue. The addition was located on the back of the building and would have no impact on anything on Middle Road, aside from the two abutters who would be happy to see it restored in the same footprint. Mr. Calkins stated that the McCues intended to return the home from the current duplex to a single-family home. The spirit of the Ordinance would be observed because the entire bldg was nonconforming. It was situated on the eastern corner of the lot, 4 feet off the lot line. They wanted to continue the building line so that it looked continuous. They were simply asking to rebuild the addition in kind in the same footprint, not expanding but replacing the existing structure so that it would fit in with everything else in the neighborhood. Substantial justice would be done because the home would be safer and more appealing to the abutters and would also raise property values. The value of surrounding properties would not be diminished but would be improved upon. The literal enforcement of the Ordinance would not allow for any improvement to the property and thus would create a hardship. The house was oriented to the east side and the garage to the west side was nonconforming. Mr. Calkins concluded by citing Sections 10.320 and 10.323, noting that they had a nonconforming building and that restoration was not viable, so they wanted to reconstruct it in the same footprint.

Mr. Rheume was concerned about the rough sketch of Middle Road because it seemed like there were things that were not currently present on the addition, such as the covered roof on the back stairway and the railings on the second floor. He asked if they would be included in the project. Mr. Calkins replied that the covered porch would be included and that they would add the railings, which would be included within the structure and would not create additional space but be more aesthetic. In response to a question from Mr. Rheume, he verified that it would be decorative only and not a patio.

He asked Ms. Walker about the Planning Department perspective. Ms. Walker stated that the previous addition was not documented for appropriate approval, and grandfathering could not be applied, so that was why the petition was before the BOA.

**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. LeMay seconded the motion.*

Ms. Chamberlin stated that granting the variance would not be contrary to the public interest because the addition was starting to fall down and the new buyers wanted to replace it. It was not their fault that there was a lack of documentation, and replacing the structure would not cause any harm. The spirit of the Ordinance would be observed because it was a modest request for relief, and would also do substantial justice. Granting the variance would not diminish the value of surrounding properties but would more than likely improve them. As to special conditions of the property, the location of the addition would not be visible from the street. Overall, changing the structure would not do any harm, and the structure would remain in the same footprint.

Mr. LeMay stated that it was a hard petition to deny. The hardship stemmed from the concept of a pre-existing nonconforming use, and there was not much point in trying to force the structure to come further into the lot. It was in the public interest to keep buildings in repair and allow people to enjoy their homes, especially with no encroachment in the back.

*The motion **passed** by a vote of 7 to 0.*

Before proceeding with the next petition, Chairman Withamt informed the Vine Street applicant that there were two Board members not in attendance and an additional Board Member would have to recuse on his petition. Therefore, the Board would have only five voting members, and the applicant had the option of postponing. He asked Mr. Pappas to let him know as soon as possible what he wanted to do.

- 11) Case # 10-11
 - Petitioner: Rebecca Susan McBeath
 - Property: 243 Middle Road
 - Assessor Plan 168, Lot 12
 - Zoning District: Single Residence B
 - Description: Replace rear deck with smaller deck and left and right side stairs.
 - 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 building or structure to be extended or reconstructed without conforming to the requirements of the Ordinance.
2. A Variance from Section 10.521 to allow 20.7%± building coverage where 20% is the maximum allowed.

SPEAKING IN FAVOR OF THE PETITION

The owner Ms. McBeath stated that her lot was very visible at the intersection of Middle Road and South Street. She outlined a brief history of the house and said that when she moved in four years before the large 40-year-old deck was dilapidated, so she had torn it down. The new deck that she was proposing reduced the deck size by half and would not encroach on any setbacks. It would make the property more enjoyable and functional for her family. Granting the variance would not be contrary to the public interest because the deck would be much smaller than the existing one, only 488 square feet compared to 844 square feet. It would have a similar footprint but would have a minor expansion of 20.7' over the lot coverage where 20' was allowed. It would not change the nature of the neighborhood. She had spoken with the abutters and other neighbors over the past two years regarding the changes. She stated that the spirit of the Ordinance would be observed because it would be only .7 feet over what was required. Substantial justice would be done because the deck would provide ingress and egress to the home and alleviate the safety issue of having no other way to get out the back of the house other than the deck. It would not diminish the values of surrounding homes but rather would increase it. The change would allow a family-friendly deck, access to the backyard, and ingress/egress to the home. It also would not be visible to the street. The hardship was that the lot was on a corner and pie-shaped. It was 50' in back and 110' in front, making it a difficult lot. The new deck would make reasonable use of the pie-shaped property.

Mr. Rheume stated that he was concerned about Drawing A2 that mentioned a deck of 501 square feet, and Ms. McBeath was asking relief for 488 square feet. The other documentation noted substantial square footage. He added up all the square footage and came up with 457 square feet, then did more calculations and came up with 516 square feet. He wanted to ensure that if the Board granted the relief, the Planning Department could issue a building permit based on that relief. Ms. Walker stated that she would need accurate dimensions and square footage and that it would have to be clarified that evening. Ms. McBeath stated that she had gotten the figures from the Planning Department. Ms. Walker replied that the Planning Department typically did not calculate figures for applicants and that she had only asked Ms. McBeath when she met with her to specify the figures. Ms. McBeath stated that she had had difficulty measuring the exact dimensions due to the odd shape of the lot, but she would ask for relief based on 516 square feet. Ms. Walker replied that it would be left up to the Board. Mr. Rheume stated that he was fine with the application and found it very reasonable but he just wanted to make sure that Ms. McBeath wouldn't have to return if there was an issue when the Planning Department validated the work.

Chairman Witham noted that the motion to grant could include Deck Plan Option B because the dimensions were there. Even though it might be tweaked, the Board knew all the outer perimeter dimensions. Mr. Rheume said he was fine with proceeding forward.

Chairman Witham mentioned that he had one letter of support from a neighbor.

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 **grant** the petition as presented and advertised, using Deck Plan Option B with a square footage of 501 s.f.. Vice-Chair Parrott seconded the motion.*

Mr. Rheume stated that granting the variance would not be contrary to the public interest because the applicant was asking for a slight amount over the requirement. The spirit of the Ordinance would be observed because the 1% over the required 20% was a small increase. Substantial justice would be done because the owner would have a deck that was more modest and usable. The value of surrounding properties would not be diminished because the deck would not impose on the neighborhood, and it met all the setbacks. The special condition of the property that distinguished it from other homes was the unique shape of the lot that created a hardship. The house basically met the conditions allowed by the Ordinance, so there was no fair and substantial relationship between the general public purposes of the Ordinance and their application to the property. Having a deck was a reasonable use of the property which would not burden the neighbors.

Vice-Chair Parrott stated that the deck was appropriate in size and style to the neighborhood and to the particular lot, which was odd and narrowed down from the front to the back. Deck Plan Option B showed the calculated square footage of 501 square feet, which was in the middle of the range that the Board had discussed and had to be close to the final dimension, so he would support the motion.

*The motion **passed** by a vote of 7 to 0.*

12) Case # 10-12

Petitioners: West End Equipment LLC, owner, Justin Miner, Applicant

Property: 270 West Road, #4B

Assessor Plan 267-19-4

Zoning District: Industrial

Description: Health club/fitness center.

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 10.441, Use #4.42 to allow a health club with an area greater than 2,000 GFA in a district where the use is allowed by special exception.
2. A Variance from Section 10.1111.10 to allow 35 off-street parking spaces where 59.5 spaces are required.

SPEAKING IN FAVOR OF THE PETITION

Mr. David Choate stated that he was the listing agent for the property and represented the potential landlord Mr. Justin Miner. He advised the Board that Attorney Bernie Pelech would be late and should arrive at any moment. Chairman Witham called for a five-minute recess and told Mr. Choate he could then either postpone the petition or present it on his own.

After the break as Attorney Pelech had not arrived, Mr. Choate stated that he would proceed with the application. He noted that he once owned the unit years before and knew the property well. He also noted that there were currently two recreational businesses on West Road, including CrossFit Gym. Mr. Miner had been in the personal training business for a while and wished to become more involved in the private sector, for which industrial buildings were ideal. The intent was to provide a low-impact personal training environment with a small number of clients. Unit 4 would be divided in half. Addressing the standards for granting a special exception, he stated that there would be no hazard to the public on account of potential fire explosion or release of toxic materials. No toxic materials were involved in personal training. There would be no detriment to property values because the operation would be in the rear of the building and there were two other gym-type operations close by. The building was buffered by landscaping and there was ample parking in front of the building and behind West Road. Only eight parking spaces were needed.

The operating hours of the fitness center would not conflict with other owners of the building, and there would be no conflict with the loading dock and no anticipated exterior changes to the structure. There would be a handicap ramp at the side door installed by the landlord. There would be no storage of materials, equipment or other vehicles on site and no increase in traffic. Traffic would actually be diminished because no large trucks or delivery vehicles would be involved. The staff would be very small, perhaps two staff members. There would be no extra demand on municipal services and no huge volume of water used. Police and fire protection would be no greater than any other gym. Waste disposal would be minimal, and there would be no increase of storm water runoff. There would be no changes to grading, except for some striping for vehicle spaces. Therefore, it was all within the special exception criteria. Mr. Choate noted that there had been several gym-type uses permitted in industrial buildings, so there was a precedent. He cited CrossFit Gym on 210 West Road as an example.

Attorney Bernie Pelech then arrived and took over the presentation. He stated that there were about 25-30 parking spaces in the rear that were not utilized. The entire back area behind the building was usually empty, which he could attest to because he had been out there no less than ten times and had never seen more than ten vehicles in the front and back lots. There were 35 lined spaces in the front and 25 in the back. He assured the Board that there would be a small amount of vehicles and traffic and plenty of space. Granting the variance would not alter the characteristics of the neighborhood or diminish surrounding property values, and substantial justice would be done. The hardship if denied would mean the use could not be there, which was not outweighed by any benefit to the public. It was not visible to West Road. Any issues would be alleviated regarding the number of parking spaces, and some spaces would be striped. He felt that the criteria would be met.

Mr. Rheume asked what was in Unit One. Attorney Pelech replied that it was a truck tire replacement company that occupied 5,000 square feet on the far right side. Mr. Choate mentioned that the front part of the building had been leased to Service Link, which had moved to Pease, so one part of it was empty. Mr. Rheume asked about Units 2a and 2b. Mr. Choate replied that

Unit 1 was the J & P Chassiswerks, Unit 3 was Infinity Components, and Unit 4 was Eastern Bearings. Mr. Rheume felt that it was a wide-open area for trucks coming in and dropping material off and asked if a current user had that sort of traffic. Mr. Choate replied that the parking area would be at the far end of the lot and would be striped so that no trailer could come close to the vehicles. Infinity Components did not have many deliveries, and there was an apron on the side for parking. They could also park in front of the loading dock. Automobiles would not have truck interference. There were lots of unused un-striped spaces in front that could be used and regulated if necessary, but it was a very small operation. Mr. Rheume noted that the concept of the business was a maximum of 5-6 people at one time, and 2,500 square feet plus or minus one space for 100 square feet equaled 21 parking spaces that needed to be provided for per their Ordinance. His concern was the 60 parking spaces that Attorney Pelech mentioned. Ms. Walker stated that Attorney Pelech had helped her calculate the number of 60, based on current usage and square footage. Attorney Pelech believed that the requirements were close to 21 spaces, as Mr. Rheume had noted. Mr. Rheume felt that there would be room for 25 cars or more in the back, but some of it might interfere with truck deliveries. Attorney Pelech replied that, in regard to any overflow, there were so many spaces in the front that people would most likely park in the front.

Vice-Chair Parrott noted that the building was divided into six units of various sizes and asked how many people worked in the units. Mr. Choate told him that the building was actually divided into five units, Units 1, 2, 3, 4a and 4b, and that there was a total of ten people in all. He said there had been a lot of confusion with the building. New England Truck Tire Center had 3 or 4 people, and their office space had a few more people. Vice-Chair Parrott stated that the Board had been provided with Units 1, 1a, 2, 3, 4a and 4b, which added up to six units. Mr. Choate replied that Unit 1a could have been divided into two units, but the second unit had only one person, Mr. Peter Varity, and he had calculated what the other businesses had and felt that the estimate of ten people in the whole building was accurate.

SPEAKING IN OPPOSITION TO THE PETITION

No one rose to speak in opposition.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Chairman Witham mentioned a letter from Mr. Varity, the owner of Unit 2, who had noted that there were ten parking spots in the rear.

Mr. Peter Varity came forward and said he was the owner of Unit 2 on 270 West Road, located in the back parking lot. He wasn't sure about the figure of 25 spots back there because it was a working back lot and had several trucks. New England Truck Tire Center usually worked on a few trucks at a time and not only one truck, and it could be a mess at times. Chairman Witham said that it had been stated that the estimate would be ten cars on a full day. Mr. Varity replied that the figure did not count the customers and that he wasn't sure about the other businesses because most of their work was out front. Chairman Witham asked if parking had even been an issue in the front lot. Mr. Varity replied that it had not because there were 35 spots out front. Each unit owner was designated 8 spaces. He was willing to let the other unit owners use his parking spaces, but if he were to sell his unit, the new owner wouldn't have to do that. However, he verified that the parking lot out front was usually empty.

Ms. Walker stated that the Planning Department would have to review any striping of parking spaces, and modifications would require their approval. Chairman Witham asked, in pertaining to the use based on anticipated clients, whether it was likely people would walk in the area during their lunch breaks. Mr. Miner stated that it could be a potential situation.

DECISION OF THE BOARD

Chairman Witham suggested that if a variance were granted, it be with the stipulation of having eight striped parking spaces at the rear approved by the Planning Department.

*Mr. Rheume made a motion to **grant** the petition as presented and advertised, with the stipulation that a minimum of eight striped parking spots be provided at the rear of the lot subject to approval by the Planning Department and, if necessary, by the Planning Board. Vice-Chair Parrott seconded the motion.*

Mr. Rheume stated that he had been struggling with the parking situation but thought that it would be adequate. He was concerned for the different tenants that did not have a change of use that would not consider the impact of the proposed use. He was swayed by the fact that the applicant's property had more square footage than needed and the parking requirement per the Ordinance might be overstated for the applicant. He spoke to the first set of criteria for the special exception. The Ordinance allowed the use within the particular zone. There would be no hazard to the public or adjacent property from fire or the release of toxic materials, as well as no detriment to property values in the vicinity or changing the essential characteristics of the area because it was an industrial area and the Board had allowed similar types of businesses nearby. He felt that it was an odd place for a health club but it was not unprecedented, so property values would not be affected. The industrial buildings had sporadic traffic requirements so it was unlikely that there would be a significant increase in traffic congestion or creation of a traffic hazard. It would be a health fitness club, not a movie theater where customers would be coming and going. West Road was well designed for traffic entering and exiting. There would be no excessive demand for municipal services and no increase in storm water runoff as well with no real change in structure.

Mr. Rheume reviewed the criteria for granting the variance and stated that it would not be contrary to the public interest because there would be adequate parking for all the various users in the building. There was assurance that no overcrowding or parking in odd locations or in the street. There was enough information about the typical number of clients and the parking required. The spirit of the Ordinance would be observed, as the applicant had indicated the 35 lined spots in the front and 25 in the back, which was sufficient. The unlined spaces may be overstated but were probably sufficient overall. Substantial justice would be done because the property would allow the new tenant to make full use of the space. As to the value of surrounding properties, they were all industrial with separate lots, and if there were a major parking issue, it was unlikely that it would spill over into adjacent properties, so property values would not be affected. Relating to the hardship criteria, the small units were broken up into different uses, and the applicant had more square footage than he realistically would use, so the parking requirement was overstated. Therefore, there was no fair and substantial relationship between the general public purposes of the Ordinance with regard to parking and their specific application to this property.

Vice-Chair Parrott concurred with Mr. Rheume’s comments and stated that it wasn’t hard to see that a more intensive need for parking could happen if there were additional employees or clients, but there was plenty of room on the lot to create additional parking if necessary, so he felt the variance could be approved. Chairman Witham added that he frequented businesses in that industrial park and was always surprised at the low number of vehicles. Having never seen more than ten cars there, he was certain that a 35-car parking lot would be sufficient, even with a change in use. There would be no undue burden on any abutters.

*The motion **passed** by a vote of 7 to 0.*

13) Case # 10-13

Petitioner: John George Pappas Revocable Trust 2004, John G. Pappas, Trustee

Property: Vine Street (Number not yet assigned)

Assessor Plan 233, Lot 107

Zoning District: Single Residence B

Description: Single family home on newly created lot.

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

1. Variances from Section 10.521 to allow a lot area and lot area per dwelling unit of 5,748± s.f. where 15,000 s.f. is required.
2. A Variance from Section 10.521 to allow continuous street frontage of 50’± where 100’ is required.

Vice-Chair Parrott recused himself from this petition. The applicant, Mr. George Pappas, then requested that they postpone the petition to the November 18 meeting.

*It was moved, seconded, and **passed** by unanimous voice to postpone the petition to the November 18, 2014 meeting.*

III. OTHER BUSINESS

No other business was presented.

IV. ADJOURNMENT

*It was moved, seconded and **passed** by unanimous voice vote to adjourn the meeting at 8:50 p.m.*

Respectfully submitted,

Joann Breault
Acting Secretary