

**City of Keene**  
**New Hampshire**

**ZONING BOARD OF ADJUSTMENT**  
**MEETING MINUTES**

**Monday, June 1, 2020**

**6:30 PM**

**Remote Meeting via Zoom**

**Members Present:**

Joshua Gorman, Chair  
Joseph Hoppock, Vice Chair  
Jane Taylor  
Michael Welsh  
Joshua Greenwald  
Arthur Gaudio, Alternate  
Louise Zerba, Alternate (arrived at 7:12 PM)

**Staff Present:**

John Rogers, Zoning Administrator  
Corinne Marcou, Zoning Clerk

**Members Not Present:**

Chair Gorman read a prepared statement explaining how the Emergency Order #12, pursuant to Executive Order #2020-04 issued by the Governor of New Hampshire, waives certain provisions of RSA 91-A (which regulates the operation of public body meetings) during the declared COVID-19 State of Emergency. He explained the procedures of the meeting and how the public can participate. He called the meeting to order at 6:33 PM.

**1) Introduction of Board Members**

Roll call was conducted, with each Board member and staff member stating their name, location, and who was in the room with them (if applicable).

**2) Minutes of the Previous Meeting: May 4, 2020**

Chair Gorman announced the location of the meeting minutes on the City's website. He asked if anyone had comments or corrections to the minutes.

Mr. Welsh made a motion to approve the meeting minutes of May 4, 2020. Mr. Hoppock seconded the motion, which passed by a unanimous, roll call vote.

**3) Unfinished Business**

Mr. Rogers stated that there is no unfinished business

4) **Hearings**

- A. **ZBA 20-04:/ Petitioner, Oink Enterprise, LLC of 615 Rhododendron Rd., Fitzwilliam, NH, represented by David Bergeron, of Monadnock Land Planning, 139 Old Walpole Rd., Keene, requests a Variance for property located at 79 North St., Tax Map #530-033-000; that is in the Medium Density District. The Petitioner requests a Variance to permit an expansion of a structure in the side setback in the medium density residential zone to permit a setback of 2.5 feet where 20 feet is required per Section 102-791 of the Zoning Ordinance.**
- B. **ZBA 20-05:/ Petitioner, Oink Enterprise, LLC of 615 Rhododendron Rd., Fitzwilliam, NH, represented by David Bergeron, of Monadnock Land Planning, 139 Old Walpole Rd., Keene, requests a Variance for property located at 79 North St., Tax Map #530-033-000; that is in the Medium Density District. The Petitioner requests a Variance to permit an enlargement of a nonconforming use in the medium density residential district per Section 102-392 of the Zoning Ordinance.**

Chair Gorman stated that ZBA 20-04 and ZBA 20-05 will be presented together but voted on separately. He read ZBA 20-05 then asked Mr. Rogers to report on the petitions.

Zoning Administrator John Rogers stated that the property is located on the corner of North and Elm Streets. He continued that it is a corner lot and the frontage is on Elm Street even though it has a North Street address. This property is in the Medium Density Zone and currently is a nonconforming use and a nonconforming structure, as a neighborhood market. During conversations with the Applicant, it was explained that the Zoning Code allows for expansions of nonconforming uses but there are certain criteria to meet. This project does not meet that criteria so staff recommended that the Applicant seek the Variance. It will be a Variance for the retail use, even though the application states an enlargement of a nonconforming use.

Chair Gorman asked if the Board members had questions.

Ms. Taylor stated that on the slide that depicts what is shown on the City's assessing maps, it looks like there are two buildings and possibly a shed. She continued that all the other drawings show one major building. She asked Mr. Rogers to explain this. Mr. Rogers replied that regarding the second building in the back, they would have to double check with the Applicant. He continued that he does not recall a second building there, though there could have been at one point.

Mr. Hoppock asked why they are using the criteria in Section 102-210, "Enlarging or Expanding a Nonconforming Use." Mr. Rogers replied that the problem is that it states "...the enlargement of a nonconforming use does not violate any zone dimensional requirements," and the second Variance request before the Board tonight is a Variance for them to be in the setback, which this building currently is built right up to the property line. They are not able to apply the Section 102-210 criteria because of the nonconformity to the dimensional requirements.

Ms. Taylor asked for clarification that even though the business is a nonconforming use currently, and could go forward as a nonconforming use, because of the proposed expansions,

the request is to turn the use into a Variance from the medium density requirements. She asked if that is correct. Mr. Rogers replied yes, staff felt that was a cleaner path for the applicant to use. He continued that some of the language in Section 102-209, which deals with the setback issue this structure has, and Section 102-210, Enlargement of a Nonconforming use, did not seem to fit this situation so they thought it would be a clearer path if the applicant sought a Variance for the use and a Variance for the setback.

Ms. Taylor asked if it is correct that the nonconforming use provisions do not enter into this application. Mr. Rogers replied yes, that is why the request for a Variance for use is before the Board, before the request for a Variance relating to the setback, even though the numbers are flip-flopped [on the agenda]. He continued that granting the Variance for the use and taking that path would pull it from the nonconforming use and the enlargement of a nonconforming use.

Mr. Hoppock stated that if he is reading the application properly, he thinks the nonconforming structural part of this fits into the unnecessary hardship factor.

Chair Gorman asked if the Board members had more questions. Hearing none, he opened the public hearing. He again read the information about how members of the public can call in and participate. He asked Dave Bergeron, representing Oink Enterprises, to present the applications.

Dave Bergeron stated that regarding Ms. Taylor's question about the site plan, there might have been a building in the back at one time but noted during the site visit, he did not see one. He assumes it must have been removed. They had a survey done, to pick up the conditions of and to locate buildings on the property to determine the setback issues, and the survey did not pick that building up. He assumes there once was a second building but it is gone now.

Mr. Bergeron stated that they looked at those sections of the Zoning Ordinance mentioned earlier by the Board. Because of the building's location in the front setback, both Sections 102-209 and 102-210 were not applicable. He showed a slide of the site plan, stating that it is the existing condition plan that the surveyor completed to determine the location of the paved area, dimensions of the property and where the building is located on the property. The building is slightly over the property line on the North Street side. The building was constructed 80 years ago. The existing parking lot is located to the right. On the next slide, Mr. Bergeron discussed what is proposed, indicating the location of the expansion to the building on the left side. He continued that they set the addition back as far as they could from North Street to do what is necessary inside the building. Also shown is a small expansion to the rear of the parking area adding a couple more spaces, to accommodate the Zoning Code's requirement which states at least one more parking space will be needed due to the expansion.

Mr. Bergeron stated that he will go through the criteria/Zoning questions. He continued that first for ZBA 20-05 is the application for the expansion of a nonconforming use. It is a nonconforming use because it is a neighborhood market, built about 80 years ago, prior to Keene's Zoning requirements. This market is in the Medium Density Zone which is not an

allowed use per the Keene Zoning Ordinance. To allow for the expansion of the market requires an expansion of a nonconforming use.

1. *Granting the Variance would not be contrary to the public interest:*

Mr. Bergeron stated that granting the Variance would not be contrary to the public interest because a neighborhood market is very important. It provides residents with a valuable service by having goods nearby to where people live. The expansion is required because the market is very small and the owner wants to add walk-in coolers for use by the business, some for items that would be available for customers to open up a cooler and take, like a soft drink, and for products made on-site. The current coolers there were constructed directly on the wooden floor of the building many years ago and they have become unstable because of the moisture from the coolers. The owner would like to remove the coolers and reconstruct the floor before adding new coolers. The space is necessary for the operation of the business, getting the coolers located near the front so customers can access them. It also gives the market more room within the business to be able to provide more services and goods to customers. It is in the public interest to allow this business to improve and serve customers in the neighborhood.

Mr. Hoppock asked Mr. Bergeron to show where the coolers would be located in the addition. On the proposed plan, Mr. Bergeron indicated that the coolers would be located on the right-hand side after the customers come in the door. He continued that there would be another cooler behind that, which would be for supplies used to create the items the owners are make and then sell. It is a very small building and the owner needs the additional space to be able to provide the services that people expect out of a market today. Most markets are much larger than this and have a larger selection of drinks and products offered for their customers.

Ms. Taylor stated that the Board had not seen this drawing before and asked that on the dark-outline area, which she assumes is the addition; if the two interruptions shown will be windows or will be loading areas. Mr. Bergeron replied that going through the front door is the customer area which goes as far as where the where the bathroom will be located. This is also the cashier area, and where there are items for purchase. He continued that regarding the dark outline of the addition, the front portion is a cooler that will be accessible by customers to get soft drinks, pre-made salads, and other foods. The next section is a cooler that would be located toward the back for use by the kitchen staff storing items for food prep and cooking. Some of the section in the back will be for storage used by the kitchen staff. Everything from the bathroom back is kitchen space and everything to the front is accessible to customers.

Ms. Taylor stated that that does not really answer her question. She asked what the breaks in the exterior wall are, asking if they will be windows. Mr. Bergeron replied yes. He continued that to the left of the floor plan is a side view of the building from North Street. There are four windows in the back and a false gable, which is to add additional interest to the building and break up the roofline. What look like doors on the side of the building are will be false doors there simply for decoration.

Ms. Taylor asked where they load and unload supplies. Mr. Bergeron replied that currently supplies are brought into the business from the parking lot. He continued that there is a loading dock there right now which is where the raw materials for the market are delivered. Everything will come in through that loading dock area in the back.

Mr. Bergeron continued addressing the criteria.

2. *If the Variance were granted, the spirit of the Ordinance would be observed:*

Mr. Bergeron stated that he found that the City's Comprehensive Master Plan (CMP) section titled, "*Neighborhoods*" and what makes a successful neighborhood which stresses a mix of uses in neighborhoods. He continued that it states that "*...each neighborhood should have an activity center, ranging in scale from a small, standalone market or deli to professional offices, laundromats, etc., and wherever possible these activity areas should be strengthened through redevelopment to provide more neighborhood amenities.*" This proposed expansion meets the goal of the CMP and the spirit of the Ordinance because it provides for neighborhood amenities. The market has been there for a very long time, providing services to the residents.

3. *Granting the Variance would do substantial justice:*

Mr. Bergeron stated that this is a very old building, having been a market for 80 years. Nowadays all markets have refrigerated cooler space that customers can access for a soft drink or other items, and this market would like to be able to do that, too. The expansion would allow the owner to improve his business and provide the foods and cold drinks that walk-in customers are looking for. The coolers need to be located in the front customer area of the store.

4. *If the Variance were granted, the values of the surrounding properties would not be diminished:*

Mr. Bergeron stated that the market has been here for a very long time and can use some attention. Not only will the owners construct the addition, but will also improve the exterior of the building as well. The addition will provide new, clean space and a new look in the building. It will help provide more goods and services that their customers want, while providing more variety to the neighborhood. Building the addition and upgrading the market will help improve surrounding properties.

5. *Unnecessary Hardship*
  - A) *Owing to special conditions of the property that distinguish it from other properties in the area, denial of the Variance would result in unnecessary hardship because:*
    - i. *No fair and substantial relationship exists between the general public purposes of the Ordinance provision and the specific application of that provision to the property because:*
    - ii. *The proposed use is a reasonable one because:*

- B) Explain how, if the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.*

Mr. Bergeron stated that in regards to the special conditions of the property, they are the location of the existing building on the lot and its use as a market. It has been a market for a very long time and the owners want to continue that use. They require more space to be able to provide the goods and services people expect to find in a market these days and provide refrigerated space customers can access goods. The CMP recognizes the importance of local markets. Denial of a Variance will not advance the purpose of the Ordinance in any fair or substantial way.

He continued, regarding the proposed use, stating this proposition is a reasonable use. The Variance is necessary to allow the owner to continue to operate and grow his business. The building is not large enough to provide a full range of services to customers like a variety of cold drinks and specialty foods. The owner needs the additional refrigerator space accessible to customers so he can supply the products customers are looking for. It is reasonable to allow the owner to expand the use in a way that will allow the business to continue to do well and provide the goods and services the customers want.

Mr. Bergeron continued that regarding the special conditions of this property, they are, again, its use as a neighborhood market. Though this market is very small, customers expect more from a local market than they have in the past and the number of services necessary for a market to carry are much more than they used to be. The Variance is necessary to be able to expand the use and provide the goods and services customers expect. The owner needs to be able to have refrigerators for customers to access, the way all other markets do.

Mr. Bergeron asked if he should continue to the next petition, ZBA 20-04. Chair Gorman replied that they would hear the two petitions together but vote separately. Chair Gorman replied in the affirmative for Mr. Bergeron to continue, reminding him there would not be necessary to cover redundancies; to cover simply what is unique to ZBA 20-04.

Louise Zerba arrived at 7:12 PM.

Mr. Bergeron stated that ZBA 20-04 is for a Variance for the side setback. He continued that the building was constructed prior to the Zoning Code that requires a setback from the property line. The building was constructed slightly over the property line on the North Street side, which is the side of the entrance to the building. The rear of the market is employee kitchen space and the front is customer space. In order to have the coolers in a location for customer access, the coolers need to be in the front area, which is within the setback. The Variance requested is for the 20-foot setback long the North Street side. The addition is about four feet back from the front line of the existing building, as far back as they could get it, to give some setback from the

front of the building and still be able to do the intended use of the expansion. The Variance is for the side setback of the proposed addition. The main issue that was looked at with this addition was unnecessarily creating a sight distance issue for vehicles traveling in that area. That is the reason they are proposing the addition further back than the existing building making the addition more conforming.

Mr. Bergeron asked if he should go through the criteria again. Chair Gorman replied that he is under the impression that the language is similar. He continued that Mr. Bergeron is feel free to relay any additional language not already discussed, or they could accept the answers he gave for ZBA 20-05 for ZBA 20-04, too. Mr. Bergeron replied that the differences in the language refer to the side setback not interfering with sight distances, especially with the intersection of North Street and Elm Street. The addition will be built far enough back from the existing building so as not be visible from the intersection. Chair Gorman asked if other than this statement, do the five criteria have the same representation for both applications. Mr. Bergeron replied yes.

Chair Gorman asked for questions from the Board.

Ms. Taylor stated that she may be reading something wrong, but in Section 102-791, Medium Density Zone, she does not see where it says a side setback of 20 feet. Mr. Bergeron replied that there is another provision in the Ordinance that says on a corner lot, in a residential zone, the setback is increased an additional 10 feet to provide that additional sight distance. Ms. Taylor asked Mr. Rogers to let them know what section that is.

Mr. Hoppock asked if it is correct that the part of the building that abuts North Street is right up to the sidewalk. Mr. Bergeron replied yes. Mr. Hoppock asked if it is correct that the proposal is to bring it back 2.5 feet. Mr. Bergeron replied that the addition will be four feet back from the front of the building. He continued that the issue is that the existing building is a little bit over the property line. Eighty years ago, the building was constructed against the back of the sidewalk and the sidewalk is not the property line. Mr. Hoppock replied that he is not concerned about the property line; he is concerned about the setback dimensions. He continued that his point is the owner will improve that with this Variance request. Mr. Bergeron agreed.

Mr. Hoppock continued that his second question is if the property to the right/east has a structure within its own setback. Mr. Bergeron replied yes, he would say that is probably is in the setback. The surveyor would have identified the corners of the building when they did the survey work. Mr. Hoppock asked if Mr. Bergeron expects any overcrowding issues with regard to the expansion to the parking area. Mr. Bergeron replied no, the parking lot meets the setback requirements. He continued that because of where it is in the lot, there are 10-foot setbacks along that area because it is in the medium density zone. The parking lot is all within the buildable portion of the lot.

Mr. Hoppock asked about the ADA ramp on the right side of the building, asking if the ramp is constructed, does the business lose any parking spaces. Mr. Bergeron replied yes, they lose one

parking space. He continued that that is why they propose adding two spots to the back to replace the one that was lost plus one additional space. Mr. Hoppock asked would the ramp not be another unique characteristic of the property, for the owner to make that accommodation. Mr. Bergeron replied that is correct.

Ms. Zerba noted on the site plan that the north section that abuts the house, says “an area of encroachment.” She asked if that is within the setback or are there any issues. Mr. Bergeron replied that this area is where an abutter has erected a fence that is actually on his client’s property. The neighbor is encroaching on the market’s property, not the other way around. Ms. Zerba stated that in that case, the addition would not be affected. Mr. Bergeron replied that is correct.

Ms. Taylor asked how many parking spaces are required. Mr. Bergeron replied that he does not know right off the top of his head. He continued that he has not figured that out based on the use of the property. Because of the fact that the market is partially market and partially kitchen, he is not sure how that breaks out. They probably are a little under parked. If they were building this today, brand new, they probably would need some more parking. Ms. Taylor replied that she assumes that the walk-in coolers will increase the square footage; it probably will increase the parking requirements. She is looking at the contour lines. If they were required to add a couple more parking spaces based on the calculation, do they have room in the back or does it get too steep? Mr. Bergeron replied that he thinks there would be room for a couple more parking spaces if they need to add more.

Mr. Rogers stated he has found the reference Ms. Taylor questioned about the additional setbacks. Section 102-826 has calculations that apply to both front and corner setbacks. That is why the 20 feet that Mr. Bergeron mentioned is what would be required for this corner lot.

Mr. Hoppock asked Mr. Rogers if he knows how many parking spaces would be required. Mr. Rogers replied that the requirement is one spot per 200 square feet, for retail, although he would need a more detailed floor plan because there might be deductions granted such as with the new addition being cooler space, that square footage would not be incorporated into the calculations. If they are non-compliant today with the parking spaces, and are making improvements and increasing the number of parking spaces, they might be more in compliance than they currently are. Mr. Gaudio asked if parking is permitted on the street. Mr. Rogers replied there is no on street parking on North and Elm Streets.

Chair Gorman asked if the Board members had more questions. Hearing none, he opened the public hearing and again gave information for the public to participate. Ms. Marcou stated that no one has called in or raised their hand.

Chair Gorman stated that the Board will discuss ZBA 20-04 and ZBA 20-05. He continued that Zoning Ordinance Chapter 102, Article IV – Districts, Division 8 – Medium Density, Sec. 102-



392 – Permitted Uses says that the store is not a permitted use within the Medium Density. An enlargement requires a Variance for the nonconforming use per Section 102-392.

Chair Gorman stated that the public hearing is closed. He continued that the Board will begin discussing ZBA 20-05. Mr. Hoppock stated that application indicates that granting the Variance would not alter the character of the neighborhood and it has been there 80 years. He further stated the petitioner is proposing to reduce their footprint and finds that to be persuasive. There are many unique features of this lot that allow it to be considered under the unnecessary hardship factor that granting the Variance would diminish. There is room for additional parking to the north of the property if needed. He will support the application.

Mr. Welsh stated that he concurs with everything Mr. Hoppock said. He continued that he was confused at first glance of the applications as it seemed more like an expansion of a nonconforming use that could be called a “natural expansion.” Given the evolution of technology or uses, an expansion of this sort might be considered necessary. He is persuaded by the argument that walk-in coolers like this are standard in small markets, as well as in the food prep area. This along with the ADA ramp are natural things that have happened in the past 80 years for facilities like this. He would have gone with an administrative natural expansion but he thinks the criteria have been answered also.

Mr. Greenwald stated that he agrees with Mr. Welch and Mr. Hoppock, and will vote in favor. He continued that this is an expansion is a needed upgrade to the existing building, not an expansion to dramatically increase the traffic. They are expanding the parking. He likes the addition of the ADA compliance. He likes that they plan to continue this as a neighborhood market. He will vote in favor.

Ms. Taylor stated that without getting into whether it is a natural expansion or not, she thinks treating this as a Variance settles it essentially once and for all that it basically is going to be a use that is a permitted variance from the permitted uses. She continued stating this Variance will give some clarity as well to the neighborhood and the owner that the market will be allowed to continue to exist as it has been for the past 80 years.

Chair Gorman stated that he concurs with everything that has been said and shares much of the same sentiment. He continued that he also thinks the continuity with the CMP is relevant. With small neighborhood businesses, their positive impact far outweighs any perceived negative impact, especially in this instance.

Chair Gorman asked if the Board members had more questions or comments. Hearing none, he read ZBA 20-05 and asked for a motion.

Ms. Taylor made a motion to approve ZBA 20-05 for a Variance for a property located at 79 North Street, Tax Map #530-033-000 in the Medium Density District for an enlargement of a

nonconforming use in the medium density residential zone per Section 102-392 of the Zoning Ordinance. Mr. Hoppock seconded the motion.

1. *Granting the Variance would not be contrary to the public interest.*

Chair Gorman stated that he votes in favor. Mr. Hoppock stated that he agrees that granting the Variance would not be contrary to the public interest. He continued that there would be no danger to the neighborhood, no alteration of the essential character of the neighborhood, and in fact, it would enhance the neighborhood. He votes in favor. Ms. Taylor stated that she agrees and votes in favor of this criteria, because it would be helpful to the neighborhood and in accord with the CMP. Mr. Greenwald stated that he votes in favor. Mr. Welsh stated that he votes in favor, too.

2. *If the Variance were granted, the spirit of the Ordinance would be observed.*

Chair Gorman stated that he votes in agreement. Mr. Hoppock stated that he agrees for the reasons stated a moment ago and he will vote in favor as well. Ms. Taylor stated that she votes in favor of this criteria again for the reasons she stated earlier. Mr. Greenwald stated that he votes in favor. Mr. Welsh stated that he votes in favor.

3. *Granting the Variance would do substantial justice.*

Chair Gorman stated that he agrees. Mr. Hoppock stated that he thinks the gain to the public is significant as well as the gain to the individual in improving it is significant. Ms. Taylor stated that she is voting in favor of this. She continued that this is one of the few instances in which both the public and the property owner will benefit. Mr. Greenwald stated that he votes in favor. Mr. Welsh stated that he votes in favor.

4. *If the Variance were granted, the values of the surrounding properties would not be diminished.*

Chair Gorman stated that he votes in agreement that surrounding property values would not be diminished, and in fact, it will probably benefit everyone in the neighborhood and their property values. Mr. Hoppock stated that he agrees with what Chair Gorman said and votes in favor. Ms. Taylor stated that she agrees that this will improve property values rather than diminish them. Mr. Greenwald stated that he votes in favor. Mr. Welsh stated that he votes in favor.

5. *Unnecessary Hardship*

- A) *Owing to special conditions of the property that distinguish it from other properties in the area, denial of the Variance would result in unnecessary hardship because:*

- iii. *No fair and substantial relationship exists between the general public purposes of the Ordinance provision and the specific application of that provision to the property because:*
- iv. *The proposed use is a reasonable one because:*

Chair Gorman stated that he votes in agreement and thinks the use is a reasonable one and denial would cause unnecessary hardship for the owner. Mr. Hoppock stated that he agrees. He continued that they identified several unique characteristics of this property, and he believes the density requirements of the ordinance are not reasonably related to the general purpose here and applying those would create an unnecessary hardship for the owner, so these criteria are met. Ms. Taylor stated she agrees with Mr. Hoppock and commented that it would be almost impossible to be in strict compliance with the Zoning Ordinance for this building given the strangely shaped lot. Mr. Greenwald stated that he votes in favor. Mr. Welsh stated that he also votes in favor.

Chair Gorman called for a final vote to approve or deny ZBA 20-05. The motion to approve passed with a unanimous vote of 5-0.

Chair Gorman read ZBA 20-04. He stated that the Board can review the five criteria and then he would seek a motion.

Mr. Hoppock made a motion to approve ZBA 20-04 and to incorporate comments from ZBA 20-05 into ZBA 20-04 and move directly to a vote. Mr. Welsh seconded the motion.

Chair Gorman stated that he agrees with eliminating redundancies of lengthy discussions, which will be very similar to discussions for ZBA 20-05. He agreed to move to voting on the criteria.

Ms. Taylor stated that she does not mind moving forward in this fashion, but her concern is that if they do not add comments as they go through each criteria they are not creating an appropriate record. Chair Gorman replied asking the Board members to add comments as they vote. Mr. Rogers advised Chair Gorman to call for a vote on the motion on the table, and stated that Board members could give their comment on the criteria during the vote. Per Mr. Gaudio's suggestion on how to achieve clarity, Mr. Hoppock withdrew his motion and Mr. Welsh withdrew his second.

Mr. Hoppock made a motion to approve ZBA 20-04. Mr. Welsh seconded the motion.

Chair Gorman asked for a roll call vote on each criteria.

- 1. *Granting the Variance would not be contrary to the public interest.*

Chair Gorman stated that based on comments and information discussed in ZBA 20-05, he votes in favor. Mr. Hoppock stated that he votes in favor for the reasons previously stated. Ms. Taylor

stated that she votes in favor and wants to add that this Variance from the setback is not contrary to the public interest because of the way it is being configured. Mr. Greenwald stated that he votes in favor. Mr. Welsh stated that he votes in favor.

2. *If the Variance were granted, the spirit of the Ordinance would be observed.*

Chair Gorman stated that he agrees that the spirit of the Ordinance is observed and votes in favor. Mr. Hoppock stated that he votes in favor. Ms. Taylor stated that she vote in favor for the reasons stated in ZBA 20-05. Mr. Greenwald stated that he votes in favor. Mr. Welsh stated that he votes in favor.

3. *Granting the Variance would do substantial justice.*

Chair Gorman stated that for reasons previously discussed, he agrees and votes in favor. Mr. Hoppock stated that that he does the same and votes in favor. Ms. Taylor stated that she also, for the reasons stated earlier, votes in favor. Mr. Greenwald stated that for reasons stated earlier, he votes in favor. Mr. Welsh stated that he also votes in favor.

4. *If the Variance were granted, the values of the surrounding properties would not be diminished.*

Chair Gorman stated that this was adequately discussed in ZBA 20-05 and he agrees the surrounding properties would not be diminished, and votes in favor. Mr. Hoppock stated that he concurs with the Chair and votes in favor. Ms. Taylor stated that she votes in favor because she thinks it will actually improve the property values. Mr. Greenwald stated that he agrees with the Chair and votes in favor. Mr. Welsh stated that he agrees with everyone and votes in favor.

5. *Unnecessary Hardship*

- A) *Owing to special conditions of the property that distinguish it from other properties in the area, denial of the Variance would result in unnecessary hardship because:*

- v. *No fair and substantial relationship exists between the general public purposes of the Ordinance provision and the specific application of that provision to the property because:*

- vi. *The proposed use is a reasonable one because:*

- B) *Explain how, if the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.*

Chair Gorman stated that he votes in favor of criteria 5.A. for the same reasons as discussed in ZBA 20-05. Mr. Hoppock stated that he agrees that this falls clearly under 5.A. for the reasons previously explained. Ms. Taylor stated that the proposal is eminently reasonable and the nature

of the lot and the building both create their own hardships. Mr. Greenwald stated that he agrees with everyone and votes in favor. Mr. Welsh stated that he votes in favor.

Chair Gorman called for a vote on the motion to approve ZBA 20-04. The motion to approve passed by a unanimous, roll call vote of 5-0.

**C. ZBA 20-10:/ Petitioner, 522 Main Street Keene LLC, of 24 Harriman Drive, Auburn, ME, represented by Michael Petrovick of Michael Petrovick Architects, 51 Railroad St., Suite 140, Keene, requests a Variance for property located at 526 Main Street, Tax Map #112-008-000; that is in the Commercial District. The Petitioner requests a Variance to permit parking in the front setback per Section 102-749 of the Zoning Ordinance.**

Chair Gorman stated that the petitioner has withdrawn its petition.

#### **5) New Business**

Mr. Rogers stated that they do not have any new business.

There being no further business, Chair Gorman adjourned the meeting at 8:00 PM. Committee members thanked Chair Gorman for his great facilitation tonight.

Respectfully submitted by,  
Britta Reida, Minute Taker

Staff edits by Corinne Marcou 6/15/2020  
Board edits by Jane Taylor 6/19/2020