

City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Tuesday, December 15, 2020

6:30 PM

Remote Meeting via Zoom

Members Present:

Joshua Gorman, Chair
Joseph Hoppock, Vice Chair
Jane Taylor
Joshua Greenwald
Michael Welsh
Art Gaudio, Alternate

Staff Present:

John Rogers, Zoning Administrator
Corinne Marcou, Zoning Clerk

Members Not Present:

Louise Zerba, Alternate

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 called the meeting to order at 6:33 PM. Roll call was conducted.

1) Unfinished Business

Chair Gorman asked if there is any unfinished business. Zoning Administrator John Rogers replied that Staff has the 2021 meeting calendar forward for the Board's approval.

Mr. Welsh made a motion to approve the 2021 meeting calendar. Ms. Taylor seconded the motion, which passed by unanimous vote.

2) Hearings

- a. **ZBA-20-28:/ Petitioner, John Pappas of 82 South Lincoln St., Keene, requests a Variance for property located at 18 Woodburn St., Tax Map #548-031-000; that is in the High Density District. The Petitioner requests a Variance to permit the conversion of the current two family into a three family residence- renovate the open space-workshop garage into a one bedroom or studio apartment per Section 102-791 of the Zoning Ordinance.**

Mr. Greenwald stated that he needs to recuse himself from this application due to a conflict. Chair Gorman replied that due to Mr. Greenwald's recusal, Mr. Gaudio will become a voting member for this application.

Chair Gorman asked Staff to provide comments and history on the Petition. Mr. Rogers explained the location and stated that this property is in the Medium Density District and in 2009 the Board granted a Variance to allow for the two-family dwelling on a lot that is substandard in terms of square footage. The Medium Density District requires 8,000 sf for the first unit and 5,400 additional sf per dwelling unit. This property only has 7,552 sf so they were granted the Variance in 2009 for the second unit to be built which was created. The Petitioner requests a Variance to have a third unit on a lot that is substandard for square footage with 7,552 sf and 18,800 sf would be required.

Ms. Taylor asked if this was a substandard-sized lot even when it was a single-family home. Mr. Rogers replied yes, that 8,000 sf is required, though he does not know if there was a square footage requirement when this home was originally built. The lot is similar in size to many of the lots around it. Referencing the map, he showed two nearby properties with .17 acres and 0.14 acres. He continued that he believes a lot of properties in this neighborhood might be substandard for the 8,000 sf needed.

Ms. Taylor stated that she is confused by the fact that it is only one Variance. Mr. Rogers replied that they already have one Variance for the second dwelling unit, from 2009. Ms. Taylor asked for clarification from the application as it says it is a woodworking shop or a garage. She is not sure if a woodworking shop by itself is allowed. Mr. Rogers replied that prior to the property owner receiving the first Variance, the hobby-type woodworking shop was built; it was not being run as a business. He does not know the current condition of what is currently on the site.

Chair Gorman asked if the Board had more questions for Mr. Rogers. Hearing none, he opened the public hearing and explained the procedures for members of the public to participate. He asked to hear from the property owner, John Pappas.

John Pappas of 82 South Lincoln St. stated that the middle section of the building, which is about 800 - 900 sf, has a large open space that he is looking to convert into a studio or one-bedroom apartment. He continued that he would not be changing the footprint of the building. It is in the Medium Density District surrounded by houses that are two- and single-family homes, on River St., Portland St., Woodburn St., and so on and so forth. They are all obviously undersized in terms of the square footage requirements with similar two-unit dwellings. He also owns 25 Woodburn St., which is across the street, and is a two-unit on .2 acres. 70 Woodburn St. is .44 acres for a three-family unit. There are other two-family units on the street that have less square footage. His request for a Variance is to turn that 800 - 900 sf space into a studio apartment, not changing the footprint or appearance on the outside.

Mr. Pappas continued that the front of the building is a three- to four-bedroom apartment. The back upstairs is already a one-bedroom apartment. This proposed new dwelling unit would be below that, similar in size. There is adequate off-street parking, a yard, and so on and so forth.

Chair Gorman asked if Mr. Pappas wanted to present the five criteria. He continued that Mr. Pappas does not have to, but it would be in his best interest to do so.

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

Mr. Pappas stated that the street is mostly comprised of apartment complexes, triplexes, and duplexes. He continued that there is an apartment building one house down from this property that has multiple units. He would not be expanding the footprint of the existing building or structure. It would not affect the value of surrounding houses and apartment buildings. It is in keeping with the surrounding neighborhood.

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

Mr. Pappas stated that it would be in keeping with the duplexes in the neighborhood and would utilize the space of the building instead of having a big empty space.

3. Granting the Variance would do substantial justice because”

Mr. Pappas stated that it fits other Variances given throughout the city. The city has a lot of duplexes, triplexes, and even single-family homes that would not meet the size requirements. This is probably something that has changed over time. This is the Medium Density District, not Low Density or Commercial. It is in keeping with the surrounding houses. It would not encroach on existing neighborhoods. The footprint would not be expanded. It would use the existing structure.

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

Mr. Pappas stated that it would be in keeping with the neighborhood.

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:*

Mr. Pappas stated that it would utilize the structure that currently exists and puts no burden on other properties or structures. He continued that it is obviously not feasible to not utilize 800 sf

in the middle of the current structure. It is obviously much more conducive to the current neighbors and tenants around it.

and

- ii. *The proposed use is a reasonable one.*

Mr. Pappas stated that it was granted as a woodworking shop and he is not sure about the noise that created but that was the use with the previous owner. He continued that it fits Variances that were previously given on Woodburn St. and other surrounding neighborhoods.

- 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. Pappas stated that it seems perfectly reasonable to utilize that space as an apartment. It fits the neighborhood and surroundings as they are not all single-family homes. This proposal would not bring more traffic. This is not a commercial use though it is a multi-family dwelling. It would not affect the values of houses currently surrounding the property, not only on Woodburn St., but also the condo behind it, River St., Court St., Linden St., Portland St., and so on and so forth.

Mr. Welsh stated that one of the possibilities for this space that is no longer going to be used as a woodshop might be to just add it to the space occupied by one of the existing dwelling units, giving them another bedroom or something similar. He asked if Mr. Pappas considered that option. Mr. Pappas replied that that might be feasible with the upstairs apartment. He continued that at the front of the house there is kind of a barn in between the two. The front of the house really does not have passage to that space except for through the basement or there is an area that is basically just used as a garage/barn. Mr. Pappas directed the Board to a site plan of the property labeled as "garage" with the garage on the other end of it that simply has an overhead door. He stated he does not think that when the previous owner received a Variance for the woodshop that they could use it as a garage. The previous owners put bollards in front of the doors and he's not sure if it was the previous owner or if the City required them to do that, but it was not used as a typical garage to store a car. The other two garages have overhead doors and can essentially be used as garage spaces. Mr. Pappas stated that this space could be used as a second bedroom to the other current apartment, although it would make a pretty big bedroom as it is approximately 36' x 24,' hence the idea of a studio apartment.

Chair Gorman stated that Mr. Pappas just said there was a Variance for the woodworking shop. That is not what was understood, from Mr. Rogers who stated the Variance was for the second unit, and during that time, that space was converted into a woodworking shop. Mr. Rogers replied yes, Chair Gorman is correct that the Variance was for the second unit, because the lack

of square footage on the lot would not have allowed for a second unit at that time, or today. This was an owner-occupied structure previously and the woodworking shop was a hobby and did not require a Variance. Regarding the bollards, there were no conditions on the first Variance. He continued that he researched the 2009 meeting minutes for the Variance and did not see any conditions given. He is not sure where the bollards came from.

Chair Gorman stated that to be clear, they are looking at a space that is currently more like a garage or storage space being converted into a living space, and it currently does not really have any use, other than being just part of the building. Mr. Rogers replied that the Applicant would have to speak to that. He continued that if this was a garage space, and this Variance were to be granted, the owner would need to provide fixed parking spaces, and he does not know about the garage. The minutes from 2009 spoke to this property having five or possibly six parking spaces. He does not know if one of those is a garage space. Mr. Rogers stated that is the one item he would point to the Board is the possible parking issue, but again, that would be for the Applicant to speak to.

Ms. Taylor stated that she could not tell from any of the drawings or pictures where the current parking is and how many spaces there are and where proposed parking would be.

Mr. Pappas replied that the parking runs along the side of the house on the left. He continued that he could always extend parking that would be “piggy-back parking.” There is a lawn between the building and the fence, about 22 feet, and as shown in the photo provided, where there is a white car parked, there are four on that asphalt parking (or five, depending on how you “piggy-back”), and three to the left-hand side. On the left-hand side of the garage is a strip of land that could be either hard pack, crushed asphalt or another acceptable parking surface where they would be able to have piggy-back parking. That would easily accommodate two more cars. Then there would be space for six or possibly seven cars. Mr. Pappas stated that is the only land on the property, the left-hand side of the house, which would accommodate the parking.

Ms. Taylor stated that the picture indicates three mailboxes on the front of the house. She continued that she was wondering if there are already three units in the house. Mr. Pappas replied that he has been renting the shop space as a studio apartment. Ms. Taylor asked if he is saying that he is already using the property as a three-family. Mr. Pappas replied that there was water connections already the he basically added a bathroom. Ms. Taylor replied that Mr. Pappas is using it as a third apartment, probably in violation of the Fire Code, so he is coming to the Board for an after-the-fact Variance. Mr. Pappas replied that the shop had smoke detectors and it is part of the house; the garage has smoke detectors and the basement does, too. The smoke detecting system is the same as when he bought the house. The front of the house, the basement, and the apartment upstairs are hard-wired. None of that has changed.

Ms. Taylor stated that considering the extensive holdings Mr. Pappas has, she is sure he is aware that there is more that goes into the Fire Code and Building Code than just smoke detectors. Mr. Pappas replied that it is also about windows, two points of egress, smoke detectors. He

continued that in any of the homes he has bought, the smoke detector systems were hard-wired or he put them in or changed them.

Mr. Hoppock stated that a moment ago Mr. Pappas was talking about parking and laying down some hard pack to the left of the barn in the picture. Mr. Pappas replied yes, to the left of the barn, whatever Keene requires as an acceptable parking surface. Mr. Hoppock replied that the application says that 73% of the lot is covered by existing structures and that 23% of the lot is covered by impervious surfaces, and that Mr. Pappas proposes no changes to that. But obviously, that is not correct. Mr. Pappas replied that in the left-hand side of the garage he would have to put down hard pack or crushed asphalt or whatever the Keene would accept. The asphalt part is asphalt. He asked if that is what Mr. Hoppock means. He continued that he did not put that there. Mr. Hoppock replied that he was asking about the “impervious ground covering.” Ground cover that will not let water in. Mr. Pappas replied that crushed asphalt or hard pack would let water in, but asphalt would not. He continued that his understanding was that crushed asphalt or hard pack was an acceptable surface.

Mr. Rogers stated that to clarify, in the Medium Density District the maximum percentage of lot covered by impermeable material is 60%. He continued that hard pack or crushed asphalt would be considered impermeable. It sounds like at this point in time there could not be any more lot coverage with impermeable surface because it already exceeds the number.

Chair Gorman asked Mr. Rogers whether one-, two-, or three-family homes are exempt from the sprinkler requirements. Mr. Rogers replied that he would have to verify with Captain Bates at the Fire Department, but his initial understanding is that this would probably be required to have a sprinkler system installed.

Mr. Pappas stated that he is not aware of a sprinkler system being a requirement for a three-family home. He continued that smoke detectors, hard-wired or not hard-wired, is something he is still kind of figuring out what is acceptable to Keene, but a sprinkler system would not be required. He has other three- or four-family buildings throughout the city that do not have sprinkler systems. Chair Gorman replied that he understands that existing properties would be grandfathered, but if you were to construct a new three-person unit you would have to have a sprinkler system, and when you are converting, he believes that crosses the threshold of no longer being under the residential building code and into the commercial one which this is something Captain Bates could answer. Mr. Pappas replied that he has talked with Captian Bates but he did not mention that. Chair Gorman replied that either way, it is not so pertinent to the Board as they will not be enforcing the Building Code; that would be up to City Staff, post the Board’s decision.

Mr. Gaudio asked, regarding the Unnecessary Hardship requirement, if Mr. Pappas could speak to why there is no fair and substantial relationship between the general purpose of this Ordinance (Medium Density limits) and the application to this property. Mr. Gaudio asked why this circumstance is exceptional and why is there an unnecessary hardship. Mr. Pappas replied that it

utilizes the building without having a big, empty space in the middle. It is a big, empty space underneath the unit in the back. It has no other purpose, other than to be converted into another room to an existing apartment or into a third apartment. He is agreeable to either one. He just wants to utilize the space. It does not seem feasible to have it empty.

Chair Gorman stated that Mr. Pappas mentioned other Variances that have been granted and the other buildings that are similar, surrounding this. He asked if Mr. Pappas could go into more detail. Mr. Pappas replied that he does not know when the Variances were given, he was just comparing lot sizes and number of units. He continued that when the houses were built that predates most of the people in this meeting and the Zoning Ordinances were different. 70 Woodburn St. is on .44 acres and is a three-family. 25 Woodburn is a two-family unit on .2 acres. Neither of those meet the requirements. 34 Woodburn St. has about 18 apartments and is on 5.4 acres, and it would require about 7.2 acres, by his math. 37 Woodburn St. has .15 acres and it is a two-unit. 43 Woodburn St. is .16 acres and has two units. 67 Woodburn St. has .21 acres and has two units. River St. abuts his property in the back and has multiple two-family units, approximately 12 or 14. 15 and 17 Portland St. have two units on .13 of an acre. 25 Portland St. is two units on .23 of an acre. Throughout the city you can go to other complexes, Colorado St. or other streets in that neighborhood, further down River St., Wilder St., and so on and so forth. Many of those duplexes and triplexes do not have the required square footage by today's standards, but it may have been different back then.

Chair Gorman stated that he agrees that there are a slew of substandard lots throughout the city. He continued that a lot of them probably were, as Mr. Pappas insinuated, prior to current zoning and grandfathered. Of course there are some that have probably had Variances. He did not know if Mr. Pappas had any specific Variance case.

Chair Gorman asked if the Board had any more questions for Mr. Pappas. Hearing none, he welcomed public comment and explained how members of the public could participate.

Taryn Fisher of 302 Court St. stated that she has an elderly dog that she walks around the neighborhood frequently and she probably does the Court St./Linden St./Woodburn St./Portland St./Court St. loop about six times a day. She continued that she is there morning, afternoon, rush hour, and late in the evening, so she knows this street well. She wants to first acknowledge that Mr. Pappas has done a really great job with the work on the building he owns at 25 Woodburn St. with a new roof and a completely renovated double deck structure. Any work that could potentially be done on 18 Woodburn St. would hopefully mirror the look, feel, and quality of that property, and she appreciates that. Another property on that street was just purchased, although she does not know by whom, and there is a group of people doing significant renovation there. She is really interested in the quality of life of the neighborhood and that particular street. Ms. Fisher continued that the photo of the property with the white car in the driveway shows a view she sees all the time. The photo shows one car in the driveway, but usually she sees it with multiple cars in the driveway and a small pick-up truck parked on the street. She guesses it is typically parked there during the day and in the evening because that railroad-style parking,

which Mr. Pappas calls piggy-back parking, is probably inconvenient for the tenants. The house directly next door to Mr. Pappas's is not his business or concern, but they typically have four to six cars parked in their driveway and a car parked on the street. The street does not have sidewalks, so if she and her dog are walking and there is a car passing, as well as cars parked on the side of the street, there is no shoulder or sidewalk and it does get cramped. Sometimes the folks across the street park their cars on the street as well. It is a tight little spot already, and when she heard Mr. Pappas say that it could easily fit six or seven cars, she cringed and thought about how it would go from Medium Density to High Density in that spot, and as a resident of neighborhood and an abutter she wants to express concern. She has no concern about Mr. Pappas being a good neighbor. Her concern is about "loading that property up." The photo shows that the white car is not even parked in the driveway; it is parked kind of on the lawn. In her view, the ideal is for every house to have a nice little lawn and cars in the driveway and not on the street. Her concern is the density, and the parking. She wants the ZBA to consider the tightness of the lot, the density of the residence as it stands, and potentially adding more cars. Six to seven cars would be tough.

Mr. Rogers asked if the Board received an email from another abutter and asked Chair Gorman to read it into the record. Chair Gorman replied yes, the Board received a copy of that letter, he thinks prior to last Monday's meeting. He continued that he could read it into the meeting minutes but does not have a copy. Mr. Rogers replied that he has a copy. He read:

"Dear ZBA of Keene,

Please read my letter into the record regarding the 18 Woodburn St. application.

At first I was all for the renovation, after all, John Pappas has been a good neighbor and landlord to my neighbors, he owns two buildings that abut mine.

Then I read his opposition to the Hundred Nights move to Water St. so I gave him a call. After half an hour, he assured me he cared more about the homeless than the City Council, but complained that he did not see how he could make any money off of the homeless, comparing the Hundred Nights folks to meth lab builders and accusing them of stealing his catalytic converter.(!)

Like I said we talked for a while and he convinced me that his apartment dwellers were not a problem. I wish though that John could find some place in his heart for homeless, and I suggest that there are plenty of folks who have the welfare voucher that could pad his pockets and he could easily help the homeless instead of insult them.

So, I do not oppose these changes, but, I would make the suggestion that the increased traffic and speed of traffic on Woodburn St. sometimes cars can get a little bit fast and in a hurry, endangering pedestrians, children, adult bicyclists, and small animals. I would suggest that road speed bumps be placed on Woodburn and River Streets. Another alternative would be to

make Woodburn St. one way from Portland St. to Linden St. That might cut some of the shortcut speeders.

*Thank you,
Marcus McCarroll, 21 Woodburn St.”*

Chair Gorman asked if the Board had any further questions. Hearing none, he asked Ms. Marcou if she was aware of any public attendees who wanted to speak. Ms. Marcou replied no. Chair Gorman closed the public hearing, stating that he will reopen it to ask technical or procedural questions if needed. He continued that the Board will deliberate on the criteria.

Chair Gorman reopened the public hearing to ask Mr. Rogers that if the Board were to grant this Variance, would the Applicant need an application for parking. Mr. Rogers replied that he does not know, but as he stated earlier, when the Variance was granted in 2009 the owner at the time made mention of “five to six parking spaces.” If there are six spaces on the site, then no, the Board would not need to hear another application for parking. If there are only five spaces, six would be needed to meet the Zoning Code. He does not know the dimensions of everything there but, the lot coverage is already exceeded. Mr. Pappas would possibly need to request a Variance for lot coverage and/or parking spaces.

Mr. Pappas stated that whether it is granted or not granted, the young couple renting the back apartment have two cars, and the front is a four-bedroom apartment and if each person has a car; that is six cars, and that is a granted Variance for a two-family unit. He continued that the cars that the woman from Court St. was referring to are non-tenants’ cars. Friends and family come over to visit the tenant(s). If you have two one-bedroom units, you assume it will be one car each, and if you have a four-bedroom there could be as many as four cars. The people who live in the front apartment only have one car now and it has been that way since he owned it. He does not think there has ever been more than one car to that front apartment. Mr. Pappas questioned that if the property stays at as a two-family, there could be six or seven cars. If it is a three-family there could be four to seven cars. He does not understand what the different would be.

Chair Gorman replied that he understands what Mr. Pappas is saying – he could rent to four people, and they could own 12 cars. He understands the logic and Mr. Pappas’ perspective, and there is some reason there. But from a Zoning perspective, what the Board is concerned with, is what the Zoning Ordinance states. Thus, the reason he just inquired of Mr. Rogers as to the fact that this property meets the criteria. The criteria for a three-unit would be six parking spaces. It is regardless of what actually happens on the property; it is that in order to have a three-family home, there would need to be six parking spaces.

Mr. Pappas stated that if he were to convert the back space to a room incorporated into one of the other apartments, he could convert the one in the back into a two- or three-bedroom apartment. Obviously it is a large space and could even accommodate a couple bedrooms. He would then have seven bedrooms in the apartments and could essentially have seven cars there, if each

roommate had their own car. He wants to make that point. He cannot tell tenants that they cannot park there and cannot tell them they cannot have friends over. Multiple families on that street, whether it is a one or two apartment complex, park on that street repeatedly – neighbors on both sides and across the street.

Chair Gorman stated that he understands all that, and these are issues for the Public Works Department. He continued that he does not know anything about the parking on Woodburn St., and even if he did, as a Board member it would not be under his purview. He does not know if on-street parking is allowed or not allowed and certainly does not know how many cars the tenants have. What the Board does have, are the parking requirements in the Zoning Code. Chair Gorman stated that this parking requirements vary from a two to three unit. What Mr. Pappas is describing, is sort of a separation between math and reality, and he understands that can exist, but the Board is weighing, specifically, is whether Mr. Pappas has adequate parking to meet the Zoning Code requirements.

Mr. Pappas asked that if it stays a two-family and he converts the back apartment to a larger apartment with two or three bedrooms, is there a parking requirement for two three-bedroom apartments or two two-bedroom apartments or is it based on the number of units. Chair Gorman replied that he believes it is based on units but will have Mr. Rogers respond. Mr. Rogers stated that the Zoning Code has parking calculations for different uses. The requirement to meet is two parking spaces per unit, so that is why six parking spaces would be required if this application were to be granted. He continued that property owners are also required to provide adequate parking for their property, too, so if there are only four parking spaces required and all of a sudden you have eight tenants and they each have a car and you do not provide enough parking, that would have to be addressed, although with the Community Development Department instead of the Zoning Board of Adjustment.

Mr. Pappas asked if that means he would have adequate parking if this stays at two apartments. He continued that obviously he has adequate parking for four cars, but questioned if the parking would be acceptable if that were converted into a larger apartment in the back. He wants to be sure he has adequate parking for either scenario. Chair Gorman replied that if he keeps it as a two-family, the Board is comfortable with four spaces. For a three-family, either there are six spaces or the Board would have to hear from Mr. Pappas again for another Variance.

Mr. Rogers stated that is correct; four spaces is what Zoning would require if this stayed as a two-unit.

Chair Gorman closed the public hearing. The Board reviewed the criteria.

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

Ms. Taylor stated that part of the public interest, along with spirit of the interest criteria is how it meets or may conflict with the purpose of the ordinance. She continued that the intent for

Medium Density District is just that, medium density. Regarding turning this particular property into three units, if it was High Density she probably would not have a problem with it, but this is a real concern to her. It is a lot that appears to already have a good deal of use. Having more intense use would not meet the spirit of the ordinance.

Mr. Hoppock stated that he agrees with Ms. Taylor. He continued that he wants to go on the record and express his extreme dissatisfaction with the accuracy of this application. Number one, “no changes” to the covered structures on the property regarding pervious or impervious structures; that is not accurate on the application. More significantly, for “present use,” Mr. Pappas wrote “currently two-family with woodshop.” The Board already heard that is not true and this really disturbs him. He agrees with Ms. Taylor’s comments on the first criterion.

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

Mr. Gaudio stated that to continue with what Ms. Taylor stated, he thinks the spirit of the Ordinance is not going to be observed. He continued that the spirit of a Medium Density ordinance is, as she said, medium density. Going to three units is pushing the number up. When Mr. Pappas went through the list of properties with two- and three-unit properties, he believes most of those, if not all of the ones that were .17-acre or .14-acre or thereabouts were all two units. The larger properties were three-unit. He is concerned about the second criterion.

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

Mr. Hoppock stated that the Board should consider whether the loss to the individual can be outweighed by a gain to the public, and his answer to that in this situation is yes. He continued that the gain to the public would be that they would not be making a precarious situation worse, in terms of the density of pedestrian and vehicular traffic, and just keeping fewer people in a small space. He does not think there is a loss to the individual, and if there is, it is outweighed by the gain to the public, in terms of safety.

Ms. Taylor stated that she agrees with Mr. Hoppock. She continued that she is quite familiar with the area and knows several people who live in the neighborhood, and it is already extremely populated. Of course, they are talking about density kind of hypothetically, because apparently the third unit is already occupied. Perhaps if it is returned to a two-unit, which has a permitted use, that would ease some of the density issues.

[Minute-taker note: the Board addressed the fourth criterion out of order, immediately after the fifth.]

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:*

and

ii. *The proposed use is a reasonable one.*

Mr. Gaudio stated that this was the reason for his previous question. He continued that he is not sure he sees any special conditions of the property that distinguish it from others that would result in an unnecessary hardship and no fair and substantial relationship exists. He does not think there is an unnecessary hardship in this example.

Mr. Hoppock stated that he agrees with Mr. Gaudio. He continued that even if there were a special condition to this property, there is fair and substantial relationship between the general purpose of the Zoning Ordinance which is managing density and protecting public safety and the application of that purpose to this property. By granting this Variance they would defeat the purposes just mentioned. Thus, he thinks there is a fair and substantial relationship, assuming that there is a special condition, which he does not think there is.

Mr. Welsh stated that he agrees with both Mr. Gaudio and Mr. Hoppock as well as the other Board members. He continued that denial of the Variance still leaves options open for the Applicant, options that allow him to utilize the property in a way that is consistent with the spirit of the ordinance, and available for making rental money, too.

Ms. Taylor stated that she agrees with everything that has been said on this point already, but to take it a little further; she does not think it would be reasonable to allow a third dwelling unit on this property. She continued that it may be to the owner's economic benefit, but that by itself does not establish hardship in any way that she is aware of. Thus, she would add that she does not think this is a reasonable use.

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 they already discussed this, he asked if anyone had anything to add.

Ms. Taylor stated that it is clear from its use as a two-family dwelling unit that there is already reasonable use established, so it is not that it cannot be used in conformity with the Zoning Ordinance. It has already had one Variance which allows the two units. She does not think that the alternative criteria fits either.

Chair Gorman stated that he tends to agree with most of what was said. He continued that he finds some comfort knowing that Mr. Pappas will be able to renovate the space to add to the unit above. That does seem like he has reasonable use, especially given the parking lot size. In comparison to a lot of the other properties he listed off, he realizes that many of them are two- or three-family units, but he agrees with Mr. Gaudio that most of the two-family ones did appear to be on .15 to .2 acres, which is fairly consistent with what Mr. Pappas has. Also, he wants to note that the previous Board has already expanded Mr. Pappas' reasonable use of the property by giving him the Variance for the second unit.

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

Chair Gorman stated that he does not believe that the values of the surrounding properties would be diminished as the outward appearance would not be greatly impacted.

Mr. Hoppock stated that he would agree with Chair Gorman, but he thinks that technically the Applicant did not meet his burden on this criteria. He is hard pressed to think that it would impact the values of surrounding properties anyway. Chair Gorman stated that he agrees with that statement.

Ms. Taylor stated that she agrees that Mr. Pappas did not provide any information on this point. She continued that she is not in the business of evaluating properties, but going with her instincts and her knowledge, it seems that adding to the density and potentially increasing the number of vehicles and the amount of traffic would have an impact on the values in the neighborhood. Chair Gorman replied point taken.

Mr. Hoppock made a motion for the Zoning Board of Adjustment to grant ZBA 20-28. Chair Gorman seconded the motion.

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

Not met by a vote of 0-5.

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

Not met by a vote of 0-5.

3. Granting the Variance would do substantial justice.

Not met by a vote of 0-5.

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

Approved 5-0.

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:*

and

ii. *The proposed use is a reasonable one.*

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.*

Not met by a vote of 0-5.

The motion to approve ZBA 20-28 failed with a unanimous vote of 0-5.

Mr. Hoppock made a motion to deny ZBA 20-28. Ms. Taylor seconded the motion, which passed with a unanimous vote of 5-0.

Ms. Taylor asked if it would be appropriate to ask Mr. Rogers to refer this property to Code Enforcement for the unapproved third dwelling unit. Mr. Rogers stated that Staff is already working with Mr. Pappas with regards to this property.

- b. **ZBA 20-29:/ Petitioner, Knotty Pine Antique Market Inc., of West Swanzey, represented by Jim Phippard, of Brickstone Land Use Consultants, 185 Winchester St., Keene, requests an Enlargement of a Nonconforming Use for property located at 96 Dunbar St., Tax Map #585-007-000; that is in the Central Business District. The Petitioner requests an Enlargement of a Nonconforming Use to expand the existing indoor self-storage space from 1,800 sf to as much as 6,700 sf on the ground floor of the existing building. The second floor of the building is currently 5,955 sf of self-storage. Currently the Knotty Pine Antiques auction gallery occupies 4,900 sf on the ground floor. Due to COVID-19, the owner wishes to convert the gallery space to self-storage units.**

Mr. Greenwald stated that as with the last application, he will recuse himself. Chair Gorman replied that due to Mr. Greenwald's recusal, Mr. Gaudio will be a voting member for this application.

Chair Gorman asked Staff to provide relevant comments and information.

Mr. Rogers stated that this property was before the Board in 2018 and was granted a Variance to allow for the self-storage in this building as it is mentioned in the application. He continued that the remaining portion of the building was to be operated as an auction house, which is an allowed use in the Central Business District where the self-storage is not an allowed use. At the time that Variance was granted, that Applicant proposed the second floor as self-storage and a portion of the bottom floor, to allow access for the self-storage to occur, and the Applicant put forth the square footage which the Board put on as a condition. Mr. Rogers continued that because of that condition, the Applicant is before the Board as an Enlargement of a Non-conforming Use. He concluded that Dunbar St. is off of Main St. and that this is the last building at the end of the street.

Mr. Gaudio stated that for clarification, this is being brought forward as an Enlargement of a Non-conforming Use, and yet, as Mr. Rogers just said, in 2018 it was given a Variance. It was not used as self-storage at that point. He is confused about why it is currently a non-conforming use and not thereby means of a Variance and therefore whether this should be a request for an Enlargement of a Non-conforming Use or a request for another Variance.

Mr. Rogers stated that in reviewing this application with the City Attorney, it is his understanding that even though it received a Variance, it still is a non-conforming use and that is why it was directed the Applicant apply for the Enlargement of a Non-conforming Use. Regardless of the Variance it still is a non-conforming use, as was his understanding.

Ms. Taylor stated that she questions square foot numbers on the application, which don't seem to add correctly. She questioned if the Variance for the self-storage facility at 7,555 sf was all on one floor. Mr. Rogers replied no, at the time it was all of the second floor and a portion of the first floor. He believes that the first floor portion was where the elevator was and it was meant to allow access for people to get through and have some self-storage on the first floor, but mostly to gain access to the second floor. The application says what the second floor is, and the remaining portion of that is what is on the first floor.

Ms. Taylor stated that what confuses her is that in the application it says "Expand the existing, indoor self-storage space from 1,800 sf to as much as 6,700 sf on the ground floor" and then it talks about the 5,955 feet on the second floor which is self-storage. She could not make the figures come out square. Mr. Rogers replied that the notice speaks to 5,955 sf on the second floor and then if you add the 1,800 sf that they are speaking of on the first floor, that gives you not the 6,700 sf figure, but rather 7,700 sf. He continued that they might want to ask the Applicant for more specific details.

Ms. Taylor stated that her second question is that the application states that there are 13 on-site parking spaces where only five are required; will this expansion of the self-storage change the

parking requirements. Mr. Rogers replied that this property is in the Central Business District so there would not be any parking requirements attached.

Chair Gorman asked if there were any more questions for Mr. Rogers. Hearing none, he opened the public hearing and explained the procedures for participating. He asked to hear from Jim Phippard.

Mr. Phippard stated that he is representing Knotty Pine Antique Market, Inc. He continued that he apologizes for the confusion about the numbers, and would like to clarify. The entire second floor is utilized for self-storage, and that was identified as part of that 7,555 sf. On the first floor, 1,800 sf includes the stairwell and the elevator and the elevator lobby, which provides customers to the second floor space, especially if they have goods that they are storing. All of the self-storage space in this building is internal to the building. There are no exterior doors. This is all climate-controlled storage, completely enclosed inside the building. The square footage of 7,555 is the entire second floor, and 1,800 sf of the first floor, which is also the stairwell and elevator and elevator lobby which is why Ms. Taylor was having difficulty with the math. He probably should have clarified that better in the application. This is not altering the building space or the building footprint. It is not an expansion of the building. This is all of the existing space internal to the building that they are looking to convert to self-storage units.

Mr. Phippard stated that as Mr. Rogers explained, Knotty Pine Antique Market came before the Board in June 2018 and received approval for a Variance to allow self-storage, which is not a permitted use in the Central Business District. The building is located at the end of Dunbar St. and there are 13 existing parking spaces in the paved parking lot adjacent to the building. The building is serviced by City water and sewer. It has sprinklers and is in full compliance with the Building Code requirements for this use and for the auction gallery use.

Mr. Phippard continued that because of COVID-19 limitations have been placed on meeting spaces such as the auction gallery, the number of people permitted to attend a live auction has been limited to the degree that it is not feasible to continue auctions. The owner is proposing that if he cannot run the auction gallery any longer under these conditions, he will continue the use in the format of online auctions, thus, he does not need 4,900 sf of space in that building. Therefore he is asking to convert that space to additional self-storage, completely enclosed inside the building.

Mr. Phippard addressed the criteria.

- 1. Such approval won't reduce the value of any property within the district or otherwise be injurious, obnoxious, or offensive to the neighborhood.*

Mr. Phippard stated that there is self-storage in the building which cannot be seen as it is entirely enclosed within the building. He continued that there are no windows to look into see storage that does not look appropriate in the building. It is an old warehouse building that has been

cleaned up considerably and converted. The sprinkler system has been completely refurbished, is completely up to date and in compliance with Code. The addition of more self-storage units in the building will be invisible to the neighborhood. The owner had auctions and visitors to the gallery during the week with those activities no longer to continue, there will be a decrease in traffic as there will be traffic only associated with the self-storage units. The existing space has had an average of four to six visitors per day. They think that by adding the additional 4,900 sf that traffic will not increase significantly and probably there will be less traffic than with the previous use as an auction gallery.

2. There will be no nuisance or serious hazard to vehicles or pedestrians.

Mr. Phippard stated that the existing 13 parking spaces on site are more than adequate to handle the traffic that Knotty Pine Antique Market has been experiencing for the self-storage units. For that square footage of self-storage units, Zoning would require five spaces, but 13 exist. There is a sidewalk on one side of Dunbar St. for access to pedestrians. They do not believe that creating additional, interior self-storage space will have any impact on vehicles or pedestrians on Dunbar St.

3. Adequate and appropriate facilities (i.e. water, sewer, streets, parking, etc.) will be provided for the proper operation of the proposed use.

Mr. Phippard stated that the building has an up to date sprinkler system for fire protection. He continued that there are no additional services required by the City for the additional storage space. The on-site parking is adequate and traffic resulting from the additional storage space will be less than that generated by the auction gallery.

Mr. Phippard stated that he thinks Knotty Pine Antique Market is in full compliance with these criteria and he hopes the Board can approve the request.

Ms. Taylor asked if there is any office space. She continued that she assumes that when it was the auction gallery, there would have been some sort of office. She asked if that will continue. Mr. Phippard replied that the building is monitored. He continued that there was a small space that was part of the auction gallery that was not a formal office; it is just a corner of the room, used during business hours. This is a space that is monitored by an attendant without a key card access, which is appropriate given that it is an interior space. That office space is in the front corner of the building, closest to Dunbar St.

Ms. Taylor stated that if it is a monitored space that means there is a person there. Mr. Phippard replied yes. Ms. Taylor asked if a person is there 24/7. Mr. Phippard replied no, only during the hours of operation. He continued that he believes it closes at 9:00 PM but the owner could confirm that.

Ms. Taylor stated that individual needs a place to sit and potentially a bathroom facility. Mr. Phippard replied that there are existing bathrooms in the building. He continued that if there is a problem with someone opening their unit, then the attendant is in the building during those hours of operation and they can help them.

Ms. Taylor stated that she takes it that it is secured with some sort of security system and/or lights. Mr. Phippard replied that there are lights inside the building and exterior lights that are required by Code at each egress door. There is an egress door on the front corner of the building closest to Dunbar St. and another entrance for customers in the location of the elevator and stairwell. There is another egress door on the east/right hand side of the building. Because of the size of the space inside the building the Building Code limits the travel distance to mandatory egress doors, with this in full compliance. The doors are all lighted and wired.

Ms. Taylor asked where the main entrance is. Mr. Phippard replied that the main entrance is the inside corner of the L shape of the building. There is an access there for someone who has boxes or materials they are putting into storage, to bring them in the door at the elevator lobby to the second floor. That is the existing customer entrance.

Mr. Pappas stated that the office is staffed Monday - Friday, 9:00 AM to 5:00 PM, and from 9:00 AM to 1:00 PM on Saturdays. He continued that the office area has a long counter that they used for the auction gallery and it is also used for when people come to rent units and have to come pick up their key cards. That space is roughly 20' by 20.' Access to the facility is 6:00 AM to 10:00 PM and this is not a 24-hour facility. It is all automated with no one can have access unless they have a full access card, which only he and an office manager have. Tenants are only allowed in between 6:00 AM and 10:00 PM when the alarms set and tenants' key cards do not work. It is a fully automated system for tenants, but their access is only from 6:00 AM to 10:00 PM, 365 days a year.

Mr. Rogers stated that he wanted to clarify for the Board that part of the condition for the 2018 Variance was the square footage and also that they stay within the existing footprint of the building, which is being proposed by Mr. Pappas. It appears that he would be meeting that portion of the Variance.

Chair Gorman asked if anyone on the Board had more questions for Mr. Phippard. Hearing none, he asked if there was any public comment.

Tom Stevens of 122 Water St. asked if the Board will still keep the condition of not allowing outside storage. He also asked if the Board would be able to put other conditions on the property, such as a hearing for the site plan. He continued that he noticed on the site plan, on the east side of the building, there are some trees indicated that he does not see are actually there. He does not know if they could put bollards on the east side as he sometimes sees people park their cars on the dirt lot. He questioned if the Board could condition this. Mr. Stevens continued that per the site plan which was earlier displayed, it showed 11 parking spaces. On the east side

there seems to be four plants that he believes are trees, flowering pear, paper birch, and a few others. He is wondering if it is possible to put a condition of making sure the site plan is adhered to, and also to have parking in the designated spots and not on the grass. He concluded that would help the aesthetics of the property.

Chair Gorman stated that many of the items Mr. Stevens is describing, falls under the category of the Community Development Department. He asked Mr. Rogers what will happen with the site plan, asking if this will be approved administratively, or will it be heard by the Planning Board. Mr. Rogers replied that he was not sure. He continued that this might be something that would be done administratively. There is no outdoor activity being proposed, from his understanding, which might not trigger a full site plan review. If Mr. Stevens had concerns with people parking on the dirt lot, City Staff could address this issue as it could be a violation of the City's property standards, of parking on unapproved surfaces. Mr. Rogers did notice and commented that this site plan does not appear to be signed, and that he is not sure if it is the official site plan or not, but Staff can review if there is landscaping missing they could have a conversation with Mr. Pappas to rectify this issue.

Chair Gorman replied that if Mr. Stevens has follow-up questions perhaps they are related more to the Community Development Department. Mr. Rogers replied most certainly, Mr. Stevens can reach out to the Community Development Department and Staff can have a conversation about it with him.

Mr. Phippard stated that Mr. Pappas does have an approved site plan for the property, which was approved in 2018. He continued that at that time they were pursuing a change to the site plan which would have involved that grassy area between the building and Community Way. Mr. Stevens correctly pointed out that Mr. Pappas had not planted the three trees that were called for on the east side of the building. The Community Development Department is on top of that, and put Mr. Pappas on notice that the security he posted will not be released until those trees are in fact there. So Mr. Pappas will go ahead and plant those three trees and be in compliance with the approved site plan.

[Minute-taker note: The Chair and Board members stated that the meeting was experiencing poor audio quality during this time of Mr. Phippard's response. Mr. Phippard state he was receiving notices of his low internet connection. Mr Phippard provided this written narrative after the meeting: "During the period of poor internet connection I was explaining that: Mr. Pappas had not planted the trees called for in the approved site plan because he was trying to purchase the land to the east of the building. His intent was to add parking in that area. That deal has since fallen through so Mr. Pappas will be planting the trees as called for on the approved site plan."]

Chair Gorman asked if there were any other questions for Mr. Phippard. Hearing none, he asked Ms. Marcou if there were any call-ins. Ms. Marcou replied no. Chair Gorman reiterated the procedures for members of the public to participate. Hearing no members of the public wishing

to speak, he closed the public hearing. He continued that he will reopen the public hearing as needed to ask procedural or technical questions.

The Board discussed the criteria.

1. *Such approval won't reduce the value of any property within the district or otherwise be injurious, obnoxious, or offensive to the neighborhood.*

Ms. Taylor stated that she agrees that it would be none of the above. She continued that Mr. Stevens brought up a good point and that at the time they make a motion on the application, that a condition be added that there continue to be no outside storage allowed.

2. *There will be no nuisance or serious hazard to vehicles or pedestrians.*

Mr. Hoppock stated that given the configuration of the building and the location of the proposed use within the building and the condition Ms. Taylor just talked about, which he agrees with, he does not think there would be any nuisance or serious hazard to vehicles or pedestrians in the area. He does not think this criterion is an issue.

Chair Gorman stated that he agrees, and he thinks that if anything, there may be less traffic than there would be if there was an auction use.

3. *Adequate and appropriate facilities (i.e. water, sewer, streets, parking, etc.) will be provided for the proper operation of the proposed use.*

Mr. Hoppock stated that this criterion appears to be met as well. Chair Gorman stated that he agrees. He continued that Mr. Pappas has the sprinklers, more parking than needed, etc.

Chair Gorman asked for any more comment on the criteria. Hearing none, he asked for a motion.

Mr. Hoppock made a motion for the Zoning Board of Adjustment to approve ZBA 20-29 on two conditions: 1) that there be no outside storage, and 2) that all of the conditions approved in the 2018 Variance be honored. Mr. Welsh seconded the motion.

Ms. Taylor asked if Mr. Hoppock means he wants the conditions to continue and be attached to this approval. Mr. Hoppock replied yes.

The Board voted on the criteria.

1. *Such approval won't reduce the value of any property within the district or otherwise be injurious, obnoxious, or offensive to the neighborhood.*

Met with a vote of 5-0.

2. *There will be no nuisance or serious hazard to vehicles or pedestrians.*

Met with a vote of 5-0.

3. *Adequate and appropriate facilities (i.e. water, sewer, streets, parking, etc.) will be provided for the proper operation of the proposed use.*

Met with a vote of 5-0.

The motion to approve ZBA 20-29 passed with a unanimous vote.

3) **New Business**

Chair Gorman asked if there was any new business. Mr. Rogers replied no. He thanked everyone for participating in two meetings this month and wished everyone happy holidays.

Chair Gorman asked Mr. Greenwald if this is his last meeting. Mr. Greenwald replied yes. Chair Gorman stated that he thanks Mr. Greenwald for his time and it has been a pleasure having him on the Board, and the Board thanks Mr. Greenwald for his service.

Mr. Greenwald stated that he gives his sincere and heartfelt thanks to City Staff for their support and professionalism and also to all of the Board members and alternates. He continued that he applauds their volunteerism and their dedication to Keene. He is honored to have served with them.

There being no further business, Chair Gorman adjourned the meeting at 8:24 PM.

Respectfully submitted by,
Britta Reida, Minute Taker

Staff edits submitted by,
Corinne Marcou, Zoning Clerk